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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MAR 30 2011

John A. Clarke, Executive Officer/Clerk
BY Mary Flores, Deputy

7 Attorneys for Plaintiff
Brand Sense Partners, LLC

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

BC 458 461

11 BRAND SENSE PARTNERS, LLC, a California
12 limited liability company,

13 Plaintiff,

14 v.

15 BRITNEY SPEARS, an individual; BRITNEY
16 BRANDS, INC., a Louisiana corporation;
17 JAMIE SPEARS, an individual; and DOES 1
through 50,

18 Defendants.

CASE NO.

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;
- (2) FRAUD AND DECEIT;
- (3) RESCISSION;
- (4) DECLARATORY RELIEF; AND
- (5) COMPENSATORY AND PUNITIVE DAMAGES.

DEMAND FOR JURY TRIAL

Filing Date:

Trial Date:

CIT/CASE: BC458461 LEA/DEF#: _____
 RECEIPT #: CCH978057033
 DATE PAID: 03/30/11 01:54:50 PM
 PAYMENT: \$395.00 0310
 RECEIVED:
 CHECK: 395.00
 CASH:
 CHANGE:
 CARD:

D774
Teresa Sanchez - Gordon

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03/30/11

INTRODUCTION

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2 1. This case arises out of Defendants' blatant circumvention and violation of their
3 contractual obligations, and their fraudulent, deceitful and dishonest representations and course of
4 conduct.

5 2. In 2003, Plaintiff Brand Sense Partners, LLC, then known as Brand Sense
6 Marketing, LLC, ("Brand Sense") and Defendant Britney Brands, Inc. ("Britney") entered into an
7 agreement, pursuant to which Brand Sense develops brand licensing opportunities for musical artist
8 Britney Spears in exchange for a commission on the revenues for Britney Spears-branded "licensed
9 products."

10 3. In 2004, Brand Sense identified and implemented a lucrative brand licensing deal for
11 Britney with the cosmetics manufacturer Elizabeth Arden, Inc. ("Elizabeth Arden"). That deal
12 provides for the sale of Britney Spears-branded licensed products, including fragrance.

13 4. Per the terms of the parties' agreement, Brand Sense is contractually entitled to a 35%
14 commission on any Britney Spears-branded fragrance sold by Elizabeth Arden.

15 5. In 2005, following the Elizabeth Arden agreement, Brand Sense and Britney executed
16 an addendum to their initial agreement, which amended the initial agreement's definition of
17 "Licensed Products" and expressly confirmed Brand Sense's right to receive commissions on "any
18 and all products produced under [the Elizabeth Arden Agreement] including, without limitation,
19 fragrance and related ancillary products"

20 6. By agreeing to a new definition of Licensed Products referring specifically to
21 products under the Elizabeth Arden agreement, Brand Sense gave up substantial rights to royalties
22 for various other categories of products included in the initial agreement's definition of Licensed
23 Products. The original definition more broadly covered categories such as apparel, collectibles,
24 consumer electronics, gifts and novelties, headwear, housewares, publishing, stationery, toys and
25 games and other categories to be further defined.

26 ///

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28

1 7. Thereafter, Britney and Brand Sense earned substantial revenues from the sale of
2 Britney-branded fragrance. But in early 2010, Defendants sought to renege on their agreement and
3 evade their contractual obligations.

4 8. In or about early 2010, Britney contacted Elizabeth Arden, unbeknownst to Brand
5 Sense, and instructed Elizabeth Arden to send all royalties directly to Britney. This was in breach of
6 the parties' agreement, which provides that Brand Sense is to receive all royalties from Elizabeth
7 Arden directly, deduct its commission and then forward the balance to Britney.

8 9. Upon learning of this, Brand Sense contacted Britney and demanded that it
9 immediately cure the breach. Caught red-handed, Defendant Jamie Spears, acting on behalf of Ms.
10 Spears and Britney, acknowledged Britney's agreement with Brand Sense and that Brand Sense had
11 a contractual right to a 35% commission on any Britney Spears-branded fragrance sold by Elizabeth
12 Arden. But Mr. Spears complained that the commission was too high and said that Britney did not
13 want to pay it.

14 10. In a discussion with representatives of Brand Sense, Jamie Spears asked that the
15 agreement be modified so that Elizabeth Arden would remit Britney's share of the royalties directly
16 to Britney (instead of remitting all sums to Brand Sense, who would then remit Britney its remaining
17 65% share, per the terms of the original agreement) and that Elizabeth Arden would remit the Brand
18 Sense share directly to Brand Sense.

19 11. Brand Sense agreed to this modification, which was confirmed by way of a letter
20 from Britney's attorney dated April 28, 2010. The request for modification and the representations
21 by Mr. Spears were a ruse and cover up for Defendants' fraudulent scheme, as set forth below.

22 12. Unbeknownst to Brand Sense, Defendants had caused Britney to enter into a "new"
23 agreement, effective as of January 1, 2010, with Elizabeth Arden for licensing fragrance. They did
24 this even though the Brand Sense/Britney agreement was—and is—in full force and effect and
25 applicable to the same products—fragrance.

26 13. By their "new" agreement, Defendants circumvented and repudiated the very
27 agreement they had affirmed and represented to Brand Sense to be in effect. Defendants' scheme
28 was to induce Brand Sense to step out of the accounting/payment process, so they could covertly

1 enter into, and get paid under, a "new" agreement with Elizabeth Arden; and Brand Sense would not
2 know the difference.

3 14. This scheme did not come to light until Elizabeth Arden sent a letter to Britney and
4 Brand Sense dated February 16, 2011 enclosing a revised royalty report "excluding the Radiance
5 [fragrance] brand in compliance with the *new* license agreement effective January 1, 2010"
6 (emphasis added). Britney knew that the Radiance brand and all future fragrance brands were and
7 are included under the parties' agreements. Brand Sense had already been paid commissions on
8 Radiance in 2010 up and until Britney's attempt to back out of that agreement in 2011 through its
9 secret "New" deal with Elizabeth Arden.

10 15. The fragrance Radiance, and all Britney-branded products produced by Elizabeth
11 Arden, are covered by the Brand Sense/Britney agreement and addendum thereto, and are therefore
12 subject to the commission provided therein. Accordingly, the "new" purported licensing agreement
13 between Britney and Elizabeth Arden is of no force or effect, is null and void, and Brand Sense is
14 entitled to its commission on all Britney-branded fragrance, etc. sold by Elizabeth Arden.

15 16. As evidenced by the "new" agreement with Elizabeth Arden, and the inclusion of
16 Radiance therein, Britney secretly made a separate deal with Elizabeth Arden in a sneaky under-
17 handed effort to circumvent and evade its obligations to Brand Sense. Effectively, Britney
18 improperly and illegally cut Brand Sense out of the Elizabeth Arden deal.

19 17. The "new" contract between Britney and Elizabeth Arden was and is a violation and
20 repudiation of the parties' agreements, which cover the sale of any fragrance by Elizabeth Arden. It
21 is also a fraud.

22 18. Britney's affirmative misrepresentations, concealment and evasive actions are
23 disappointing because Brand Sense has been a successful and dedicated representative for Britney
24 throughout multiple management changes and other difficulties experienced by Ms. Spears.

25 19. Brand Sense's efforts generated millions of dollars in revenue for Ms. Spears when
26 she otherwise would have had little or none. Brand Sense performed under its agreements with
27 Britney to protect the value of the Britney brands, only to be lied to and deceived by Ms. Spears
28 and/or her representatives.

1 29. Venue is proper in this Court because the agreement at issue in this dispute was
2 entered into in this judicial district; and the agreement contains a choice of law/venue provision
3 which provides that the courts of Los Angeles, California shall have exclusive jurisdiction and venue
4 with respect to any disputes.

5 FACTUAL ALLEGATIONS

6 The Brand Sense/Britney Agreement

7 30. Brand Sense is in the business of acquiring and developing brands. Brand Sense
8 serves and assists a wide range of clients, including some of the most prominent names in the
9 entertainment industry, in promoting and realizing the value of their brands.

10 31. Britney Spears is one of the most popular singers and performers of her generation
11 and the owner of Britney Brands. Ms. Spears and her father, Jamie Spears, who is the conservator of
12 Ms. Spears' financial affairs, understood that Brand Sense could help Britney capitalize on the
13 popularity and appeal of the Britney Spears brand.

14 32. On September 19, 2003, Ms. Spears, signing on behalf of Britney which she owns
15 and controls, entered into a licensing development agreement with Brand Sense, pursuant to which
16 Brand Sense would develop and implement a licensing strategy for Britney. *See* Term Sheet for
17 Licensing Representation between Britney and Brand Sense (hereinafter the "Brand Sense/Britney
18 Agreement"), a true and correct copy of which is attached hereto as Exhibit A.

19 33. Under the Brand Sense/Britney Agreement, Brand Sense has the right to "manage,
20 invoice and collect all third party licensing proceeds" from any licensing contract entered into
21 between Britney Brands and any third party. (*Id.* at 1.) Brand Sense is entitled to keep 25-35% of
22 licensing proceeds (depending on the type of product) and remit the remainder to Britney. (*Id.*)

23 34. The term "Licensed Products" under the Brand Sense/Britney Agreement was broadly
24 defined to include the following categories: "Accessories, Apparel, Collectibles, Consumer
25 Electronics, Gifts/Novelties, Headwear, Health/Beauty, Housewares, Publishing, Stationery/Gifts,
26 Toys/Games, or other categories of products to be further defined . . . (*Id.* at 3.)

27 35. The Brand Sense/Britney Agreement includes a "Survival Rights" clause, which
28 provides that except for termination attributed to Brand Sense's breach, Brand Sense shall continue

1 to receive its Fees for any sub-license initiated under the Brand Sense/Britney Agreement and “such
2 rights shall survive termination or expiration of this Agreement.” (*Id.* at 4.)

3 **The Elizabeth Arden Agreement**

4 36. Brand Sense performed diligently for Britney and formulated and implemented a
5 licensing strategy. Among other things, it established a relationship with the cosmetics, skincare and
6 fragrance manufacturer and distributor Elizabeth Arden, who was interested in licensing the Britney
7 brand for its products.

8 37. On February 3, 2004, Britney entered into a licensing contract with Elizabeth Arden
9 wherein Elizabeth Arden obtained the exclusive right to manufacture and sell fragrance, cosmetics
10 and skin treatments under the Britney Spears brand.

11 38. The agreement with Elizabeth Arden was drafted on the letterhead of Brand Sense.
12 *See* Term Sheet between Britney and Elizabeth Arden (hereinafter the “Elizabeth Arden
13 Agreement”), a true and correct copy of which is attached as Exhibit B, at 1. It is referred to by the
14 contractual parties as the “Brand Sense Marketing Term Sheet.”

15 39. Brand Sense was responsible for establishing this relationship between Elizabeth
16 Arden and Britney. Brand Sense spent substantial time and effort working on the development of
17 Britney’s products pursuant to the Elizabeth Arden Agreement.

18 40. The Elizabeth Arden Agreement is highly lucrative for Ms. Spears and provides for a
19 royalty and minimum guarantee of over \$15 million. (*Id.* at 4).

20 41. Per the terms of the Brand Sense/Britney Agreement, Brand Sense obtained the right
21 to receive all payments due under the Elizabeth Arden Agreement, including a 35% commission on
22 the sale of fragrance.

23 **The Brand Sense/Britney Addendum**

24 42. In light of the Elizabeth Arden Agreement, in May 2005 the parties executed an
25 addendum to the Brand Sense/Britney Agreement. *See* “First Addendum to the Term Sheet for
26 Licensing and Representation” (hereinafter the “Brand Sense/Britney Addendum”), a true and
27 correct copy of which is attached hereto as Exhibit C.

1 43. The Brand Sense/Britney Addendum defines Brand Sense's right to receive
2 commissions on "Licensed Products," amended to include "any and all products produced under [the
3 Elizabeth Arden Agreement] including, without limitation, fragrance and related ancillary products;
4 hair, face, skin and body care; bath; and cosmetics." (*Id.* at 1.)

5 44. This new definition of Licensed Product is more restrictive than that of the initial
6 agreement. By agreeing to a new definition of Licensed Products referring only to fragrance and
7 other related products under the Elizabeth Arden agreement, Brand Sense gave up valuable rights to
8 royalties for various other categories of products included in the initial agreement's definition of
9 "Licensed Products."

10 45. The Brand Sense/Britney Addendum further states: "For avoidance of doubt, [Brand
11 Sense's] management, invoicing, collection and reporting of third party licensing proceeds from the
12 Elizabeth Arden, Inc. agreement shall survive expiration or termination of the [Brand Sense/Britney
13 Agreement] and shall continue for the duration of that license agreement, including renewed
14 extensions, additions or modifications." (*Id.*)

15 46. Thus, Brand Sense has the right to receive all payments due under the Elizabeth
16 Arden Agreement for as long as any Licensed Products—defined to include fragrance—are sold.

17 **Defendants' Initial Breach**

18 47. In early 2010, Brand Sense learned that Britney Brands' representatives had contacted
19 Elizabeth Arden and instructed Elizabeth Arden to stop sending payments and product approvals to
20 Brand Sense. This was a breach and repudiation of the Brand Sense/Britney Agreement.

21 48. Upon learning of Britney Brands' instructions to Elizabeth Arden, Brand Sense
22 contacted Britney and demanded compliance with the terms of the Brand Sense/Britney Agreement.
23 A phone call was arranged between Defendant Jamie Spears, acting on behalf of Ms. Spears and
24 Britney Brands, and a representative of Brand Sense.

25 49. In that phone call, Mr. Spears agreed that Britney would retract its prior instruction to
26 Elizabeth Arden and acknowledged and agreed that the Brand Sense/Britney Agreement was in
27 effect, including the provision pursuant to which Brand Sense would receive its 35% commission on
28 fragrance sold by Elizabeth Arden

1 50. Mr. Spears represented that Britney would continue to abide by the terms of the
2 Brand Sense/Britney Brands Agreement, but requested in return a change in the parties' agreement.

3 51. Mr. Spears made these representations to induce a modification in the Brand
4 Sense/Britney Brands Agreement whereby Elizabeth Arden would send Britney's share of royalties
5 directly to Britney, rather than to Brand Sense first, so as to remove Brand Sense from the
6 accounting/payment function it previously had performed.

7 52. Upon information and belief, Mr. Spears had no intention to continue honoring the
8 terms of the Brand Sense/Britney Agreement and was concealing his plan to circumvent the Brand
9 Sense/Britney Agreement entirely. In fact, as later revealed, Britney Brands secretly entered into a
10 separate "new" license agreement with Elizabeth Arden effective January 1, 2010, undermining the
11 parties' agreement.

12 53. Reasonably relying on Mr. Spears' representations, Brand Sense agreed to the
13 modification of the Brand Sense/Britney Agreement whereby Elizabeth Arden would send royalties
14 directly to Britney (the "Modification Agreement"). A true and correct copy of a letter from
15 Britney's attorney dated April 28, 2010 confirming the Modification Agreement is attached hereto as
16 Exhibit D. With this modification, Brand Sense effectively ceded control over the flow of money,
17 not knowing that Defendants would exploit this arrangement to their advantage.

18 Britney's Clandestine Circumvention

19 54. In February of 2011, Brand Sense received a letter from Elizabeth Arden purporting
20 to call Brand Sense's attention to a "clerical error" in the commission calculations for Brand Sense.
21 Elizabeth Arden reported that Brand Sense's commission for the prior quarter had been reduced to
22 "exclude the Radiance brand in compliance with the *new* license agreement effective January 1,
23 2010" (emphasis added).

24 55. Brand Sense had not been informed of, and was not aware of, any "new" license
25 agreement. Britney had been concealing these arrangements from Brand Sense for months.

26 56. The "new" license agreement is a blatant circumvention and violation of the Brand
27 Sense/Britney Agreement and Addendum. As set forth above, those agreements provide that Brand
28 Sense is entitled to its 35% commission on the sales of any Elizabeth Arden product including,

1 without limitation, fragrance; and this commission survives the expiration or termination of the
2 Elizabeth Arden Agreement.

3 57. Britney cannot circumvent its agreement with Brand Sense by purporting to enter a
4 new agreement directly with Elizabeth Arden that addresses a product already covered and provided
5 for in the Brand Sense/Britney agreement. Britney's "new" agreement with Elizabeth Arden is a
6 direct and complete repudiation of its obligations under the Brand Sense/Britney Agreements.

7 58. As a result of Defendants' breach of their contractual duties, Brand Sense has been
8 denied the Radiance commissions to which it is entitled, and suffered compensatory, consequential
9 and incidental damages believed to be in excess of \$10 million. Furthermore, Defendants'
10 misrepresentations and concealment were intentional, fraudulent and oppressive, such that a reward
11 of punitive damages, in addition to actual damages, is justified.

12 FIRST CAUSE OF ACTION

13 (Breach of Contract)

14 (Against Defendant Britney)

15 59. Plaintiff re-alleges and incorporates herein by reference each of the foregoing
16 paragraphs and each of the subsequent paragraphs, and further alleges as follows:

17 60. Plaintiff and Defendant Britney entered into a written agreement, the Brand
18 Sense/Britney Agreement, and a written addendum to that agreement, Brand Sense/Britney
19 Addendum (together, the "Agreements"). Pursuant to the Agreements, Brand Sense was given the
20 exclusive, worldwide right to use, exploit, or otherwise publish Britney Brands' Licensed Materials,
21 including the Britney Spears name and logo, for the purpose of soliciting third-party licenses.

22 61. Also under the Agreements, Plaintiff was and is entitled to receive a 25-35%
23 commission on the net revenues of any third-party license initiated by Plaintiff, including a 35%
24 commission on the sale of any fragrance by a third-party license initiated by Plaintiff..

25 62. Plaintiff initiated and implemented a third-party license with Elizabeth Arden to sell
26 fragrance, cosmetics and skin treatments under the Britney Spears name. Under the terms of the
27 Agreements, Britney Brands was and is obliged to pay Plaintiff a 35% commission on the net
28 revenues of any fragrance sold by Elizabeth Arden.

1 63. Britney Brands committed a material breach of the Agreements when it entered into a
2 “new” licensing agreement with Elizabeth Arden for the fragrance “Radiance” and instructed
3 Elizabeth Arden to cease paying commissions to Plaintiff on the sales of “Radiance.” Britney’s
4 “new” license agreement with and instructions to Elizabeth Arden are a repudiation of Britney’s
5 obligations under its pre-existing agreements with Brand Sense.

6 64. Plaintiff has performed its obligations pursuant to the Agreements, except those
7 otherwise excused by Britney’s material breach of contract.

8 65. As a direct and proximate result of Britney’s breach, Brand Sense has not received
9 the benefit of its bargain and has suffered damages, and will continue to suffer damages, in excess of
10 \$10 million or according to proof at trial.

11 **SECOND CAUSE OF ACTION**

12 **(Fraud and Deceit)**

13 **(Against Defendants Jamie and Britney Spears)**

14 66. Plaintiff re-alleges and incorporates herein by reference each of the foregoing
15 paragraphs and each of the subsequent paragraphs, and further alleges as follows:

16 67. In or about April 2010, Plaintiff and Defendants entered into an agreement whereby
17 the Brand Sense/Britney Brands Agreement was modified to allow Elizabeth Arden to send
18 payments directly to Britney, rather than to and through Brand Sense, as provided under the terms of
19 the Brand Sense/Britney Brands Agreement.

20 68. To induce the modification, Defendant Britney Spears, acting by and through her
21 representative Jamie Spears, represented that Defendants would abide by the terms of the Brand
22 Sense/Britney Brands Agreement, including its terms requiring payment of a 35% commission to
23 Plaintiff on any sales of licensed products under the Elizabeth Arden Agreement.

24 69. When Defendants, and each of them, made these representations, they knew them to
25 be false. Defendants made such misrepresentations and failed to disclose material facts with the
26 intent to deceive Plaintiff and induce it into entering into the modification.

1 70. At the time of these representations, Plaintiff was ignorant of their falsity and
2 believed them to be true. In justifiable reliance thereon, Plaintiff was induced to, and did, enter into
3 the modification.

4 71. As a direct and proximate result of the malicious, deceitful, deliberate, willful and
5 fraudulent conduct of Defendants, and each of them, as herein alleged, Plaintiff has incurred, and
6 will incur further general, consequential and incidental damages, the exact amount of which is
7 unknown at the present time, but is believed to be in excess of \$10 million.

8 72. The conduct of Defendants alleged above was undertaken with the intent to injure
9 Plaintiff, or with a willful and conscious disregard of Plaintiff's rights, and constitutes clear and
10 convincing evidence of outrageous, oppressive, malicious, and fraudulent conduct that entitles
11 Plaintiff to an award of punitive damages against Defendants, and each of them, in an amount
12 sufficient to deter Defendants and other similarly situated from similar wrongful conduct in the
13 future.

THIRD CAUSE OF ACTION

(Rescission)

(Against Defendant Britney)

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17 73. Plaintiff re-alleges and incorporates herein by reference each of the foregoing
18 paragraphs and each of the subsequent paragraphs, and further alleges as follows:

19 74. Pursuant to section 1689 of the Civil Code, a contract may be rescinded "[i]f the
20 consent of the party rescinding, or of any party jointly contracting with him, was . . . obtained
21 through duress, menace, fraud or undue influence . . ." Civ. Code § 1689, subd. (b)(1).

22 75. At the time Plaintiff entered into the modification, it relied on Defendants'
23 representations that they intended to and would perform their duties and obligations under the
24 Agreements. At the time Defendants entered into the modification, they never intended to fully
25 perform their duties and obligations under the Agreements.

26 76. Had Plaintiff known that Defendants never intended to fully perform under the
27 Agreements, it would not have entered into the modification. Plaintiff will suffer substantial harm
28 and injury if the modification is not rescinded.

1 77. Plaintiff intends service of this Complaint in this action to serve as notice of the
2 rescission of the modification and hereby demands that Defendants instruct Elizabeth Arden to direct
3 royalty payments directly to Plaintiff, per the original terms of the Brand Sense/Britney Brands
4 Agreement.

5 78. Plaintiff seeks a judicial declaration that the modification is rescinded and all
6 royalties from Elizabeth Arden are to be sent first directly to Brand Sense, per the terms of the
7 original Brand Sense/Britney Agreement.

8 **FOURTH CAUSE OF ACTION**

9 **(Declaratory Relief)**

10 **(Against Defendant Britney Brands)**

11 79. Plaintiff re-alleges and incorporates herein by reference each of the foregoing
12 paragraphs and each of the subsequent paragraphs, and further alleges as follows:

13 80. An actual controversy has arisen and now exists between Plaintiff and the Defendants
14 over the right to future payments under the Agreements.

15 81. Plaintiff contends that under the Agreements, Britney was and is obliged to pay
16 Plaintiff a 35% commission on any fragrance sold by Elizabeth Arden, including "Radiance," as
17 provided therein. Plaintiff is informed and believes that Britney disputes this contention.

18 82. A judicial declaration is necessary and appropriate at this time to the effect that Brand
19 Sense has the right to receive the aforementioned commission due under the Agreements; and
20 further, that the "new" agreement between Defendants, or any of them, and Elizabeth Arden is null
21 and void.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiff prays that this Court enter a judgment against Defendants as
24 follows:

- 25 1. For compensatory damages in an amount to be proven at trial, but believed to be in
- 26 excess of \$10 million;
- 27 2. For punitive damages in an amount sufficient to deter Defendants' wrongful conduct
- 28 and that of others similarly situated;

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3. For a judicial declaration that the modification is rescinded and that all royalties from Elizabeth Arden are to be sent first directly to Brand Sense, per the terms of the original Brand Sense/Britney Agreement;
4. For a judicial declaration that Brand Sense is entitled to a 35% commission on the net revenues of sales of "Radiance";
5. For a judicial declaration that the "new" agreement between Defendants, or any of them, is illegal and of no force or effect, and is null and void;
6. For pre-judgment and post-judgment interest at the maximum legal rate against all Defendants;
7. For attorneys' fees and costs in connection with this litigation; and
8. For such other and further relief as this Court may deem just and proper.

DATED: March 30, 2011

MILLER BARONDESS, LLP

By: 

Louis R. Miller
Attorneys for Plaintiff
Brand Sense Partners, LLC



DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury.

DATED: March 30, 2011

MILLER BARONDESS, LLP

By: _____

Louis R. Miller
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Brand Sense Partners, LLC

MILLER BARONDESS, LLP

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