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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91232716
Party	Defendant Peter Denbigh
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Submission	Motion to Suspend for Civil Action
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Date	03/10/2017
Attachments	031016__Opposition No. 91232716__Applicants_Motion to Suspend Opposition.pdf(206753 bytes) Complaint__Watch Yo Mouth vs Denbigh.pdf(2774229 bytes) Exhibits A to D of Complaint__Watch Yo Mouth vs Denbigh.pdf(5317342 bytes) Exhibits E to J of Complaint__Watch Yo Mouth vs Denbigh.pdf(5781492 bytes) Complaint__Warch Yo Mouth Vs. Denbigh__Memorandum of Law.pdf(5044031 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

JOSEPH CAIOLA III

Opposer,

v.

PETER DENBIGH

Applicant.

In re Application Serial No. 87/044,623

Mark: WATCH YA' MOUTH

Published: OCTOBER 11, 2016

Opposition No.: 91232716

APPLICANT'S MOTION TO SUSPEND PROCEEDING IN VIEW OF PENDING CIVIL

ACTION PURSUANT TO 37 C.F.R. 2.117

Applicant, Peter Denbigh, ("Applicant") hereby moves for suspension of these proceedings pursuant to 37 C.F.R. § 2.117(a). A copy of a Complaint filed on February 2, 2017 by Watch Yo Mouth, LLC against Denbigh and Associates, LLC and Applicant is attached here as Exhibit A (the "Civil Action"). Opposer, Joseph Caiola III ("Opposer"), is the majority owner and CEO of Watch Yo Mouth, LLC, and Watch Yo Mouth, LLC is the owner of U.S. Trademark Application Serial No. 87/058,618. The Civil Action is currently pending in the United States District Court for the District of New Jersey.

The Complaint sets forth a cause of action under the Lanham Act, 15 U.S.C. § 1125(a), including claims of unfair competition and trademark infringement based on Applicant's use of the mark ("Applicant's Mark") in the subject application, Serial No. 87/044,623 (the "Subject Application"), and Opposer's use of the mark in U.S. Trademark Application Serial No. 87/058,618 ("Opposer's Mark"). The Complaint further requests a declaratory judgment that the Subject Application is terminated and cancelled.

“Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.” 37 C.F.R. § 2.117(a). “A civil action may involve other matters outside Board jurisdiction and may consider broader issues beyond right to registration and, therefore, judicial economy is usually served by suspension.” TBMP § 510.02(a). A civil action need not be dispositive of Board proceeding, but only needs to have a bearing on issues before the Board in order to warrant suspension of the Board proceeding. *Id.* (citing *New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 USPQ2d 1550, 1552 (TTAB 2011)).

Because the Complaint alleges that Applicant’s Mark and Opposer’s Mark are confusingly similar as applied to the goods named in Applicant’s and Opposer’s respective trademark applications, and requests the cancellation of the Subject Application, the Civil Action undoubtedly will have a bearing on the issues involved in the instant proceeding.

CONCLUSION

In view of the fact that a determination of the issues pending in the Civil Action will have a bearing on the issues currently pending before the Board, Applicant respectfully requests suspension of these proceedings pending determination of the Civil Action pursuant to 37 C.F.R. §2.117(a).

Jared Burden
/s/

Jared Burden
Jared Burden PLLC
Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed, postage prepaid, and sent via electronic mail this 10th day of March 2017, upon:

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

<p>WATCH YO MOUTH, LLC, Plaintiff, -against- DENBIGH AND ASSOCIATES, LLC d/b/a SKYLER INNOVATIONS, and PETER DENBIGH Defendants</p>	<p>ECF VERIFIED COMPLAINT Civil Action No.</p>
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Plaintiff Watch Yo Mouth, LLC ("Plaintiff"), by way of Verified Complaint against Defendants Denbigh and Associates, LLC d/b/a Skyler Innovations and Peter Denbigh ("Defendants"), alleges as follows:

NATURE OF ACTION

1. Plaintiff and Defendants produce and market competing, yet very similar, board games. This is an action brought by Plaintiff under the Lanham Act, 15 U.S.C. § 1125(a), and the common and statutory law of the State of New Jersey, due to Defendants' intentional infringement of Plaintiff's trademark and goodwill as well as its unfair competition with Plaintiff which has irreparably damaged (and continues to irreparably damage) Plaintiff and its business.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338(a), 15 U.S.C. § 1121, and 28 U.S.C. § 1367.

3. Venue is appropriate in this District, the place where Plaintiff resides and where the cause of action arose pursuant to 28 U.S.C. § 1391. Notably, both Plaintiff and Defendants sell their products which are at issue in this matter nationally and in the State of New Jersey.

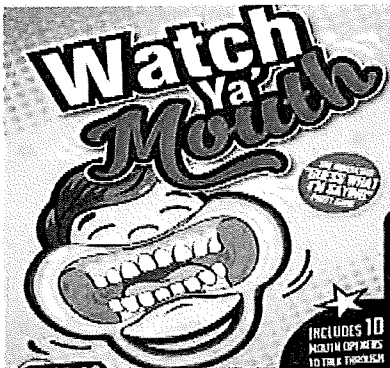
3. This action arises under 15 U.S.C. §1051, et seq., and under common law.

THE PARTIES

4. Plaintiff is a Limited Liability Company organized and existing under the laws of the State of New Jersey, with its principal place of business at 81 Pension Rd, Unit 112, Englishtown, New Jersey. Plaintiff, through its majority owner and CEO Joe Caiola, is the innovator and creator of the Watch Yo Mouth™ board game (the “WYOM Game”) in which participants use cheek retractors while stating words and phrases which their teammates attempt to understand and identify. Plaintiff sells the WYOM Game nationally and internationally under the trademark “Watch Yo Mouth” (the “Trademark”), which was assigned to it by Joe Caiola effective May 19, 2016 (with all goodwill being transferred to Plaintiff). Plaintiff, directly and through Mr. Caiola prior to assignment, has marketed in interstate commerce and sold the WYOM Game using the Trademark since at least May 12, 2016. The Trademark has been used in commerce continuously to identify and promote the WYOM Game. The Trademark is used in text format as well as embodied in a logo that prominently features a cheek retractor as follows:



5. Defendants are, upon information and belief, (a) a Limited Liability Company with a principal place of business located at 103 E. Beverley St., Suite D, Staunton, Virginia and (b) an individual who resides at 103 E. Beverley St., Suite D, Staunton, Virginia. Defendants produce a copycat board game (the "Infringing Game") using the infringing "mark" "Watch Ya Mouth" (the "Infringing Mark"). Defendants sell the Infringing Game through eCommerce channels (including, but not limited to, through the domain www.wyamgame.com (the "Infringing Website") and brick and mortar retailers. The Infringing Mark also uses cheek retractors and also requires players to state words and phrases which their teammates attempt to understand and identify. Defendants have imitated Plaintiff at every turn and have improperly traded on Plaintiff's goodwill, unfairly competed with Plaintiff, and infringed upon the Trademark to Defendants' benefit and Plaintiff's detriment. The Infringing Mark is embodied in a logo also prominently featuring a cheek retractor as follows:



FACTS COMMON TO ALL COUNTS

Background Of WYOM

6. WYOM is the brainchild of its CEO Joe Caiola. Mr. Caiola is a lifelong entrepreneur, creating his first venture (an eCommerce platform dedicated to the sale of auto parts) at age 17.

7. Later, Mr. Caiola attended and graduated from Rutgers University. While a student at Rutgers, he formed two more businesses: (1) urboox™ – a textbook marketplace and (2) SyllabusGenie™ - an application that assisted college students with course management.

8. After graduating from Rutgers with a degree in Communications, Entrepreneurship, and Psychology, Mr. Caiola continued his entrepreneurial endeavors while also working full-time as a senior account executive with a marketing firm. This passion resulted in the inspiration for the WYOM Game in 2016.

9. First inspired by a Hollywood film and, later, by a YouTube video featuring people playing around with cheek retractors, in May 2016, Mr. Caiola tried unsuccessfully to locate and quickly obtain the cheek retractors. Mr. Caiola also determined that there was no commercially available board game which used the cheek retractors in humorous word/game play. It was in that eureka moment that the WYOM Game was born.

10. Setting the wheels in motion, Mr. Caiola immediately took the following actions to commercialize the WYOM Game and secure rights to the Trademark:

- On May 12, 2016, he purchased the domain www.watchyomouth.com (the "Website").
- On May 12, 2016, he built and launched the Website, which included a sales portal which accepted all major credit cards.

- On May 12, 2016, he began a global advertising campaign through Facebook advertising the WYOM Game and directing traffic to the aforementioned Website to secure pre-production sales of same.
- On May 13, 2016, the first orders for the WYOM Game were placed through the Website – 32 units resulting in purchase orders of over \$1,000. Notably, the first sale was from a customer in Australia.
- Between May 13 and May 16, 2016, Mr. Caiola ordered the necessary pieces to produce the game as well as engaged in customer support regarding the purchases through the Website.
- On May 19, 2016, Mr. Caiola formed the entity Plaintiff Watch Yo Mouth, LLC.
- Effective May 19, 2016, Mr. Caiola assigned and transferred all rights, title and interest to the Trademark and the goodwill associated therewith (including, but not limited to, that outlined in this Verified Complaint) to Plaintiff Watch Yo Mouth, LLC.
- Advertising and production continued and by May 23, 2016, the Website was receiving 90,000+ impressions from Facebook. The foregoing marketing resulted in total sales of \$12,656 through May 23, 2016.

11. The global reach and market penetration of the WYOM Game using the Trademark was immediately apparent. As of May 23, 2016:

- WYOM received orders from 44 out of the 50 states in the United States of America through the Website and otherwise.
- WYOM received orders from 2 regions of Australia through the Website and otherwise.
- WYOM received orders from 5 regions of Canada through the Website and otherwise.
- WYOM received orders from Iceland and Norway through the Website and otherwise.

12. As of May 25, 2016, Plaintiff shipped the first allotment of WYOM Games. In order to produce and ship the same, Plaintiff ordered custom game boxes, custom game cards,

custom instruction sheets, sand timers, and mouth pieces - all of which were tailored to the WYOM Game and many of which are embossed with the Trademark.

13. Both prior to and since the first shipment of the WYOM Game at the end of May 2016, Plaintiff has expended significant sums totaling more than \$45,000 to acquire, identify and promote its Trademark in commerce – including through global advertising through Facebook and Google.

14. As a result of the foregoing, the Trademark is highly associated with Plaintiff, the WYOM Game and the Website.

15. As a result of the foregoing, the Trademark and Plaintiff have achieved significant acknowledgment as originator of the cheek retractor board game concept and properly advertised itself as such.

16. As evidence of the strong association between Plaintiff, the WYOM Game and the Trademark, Plaintiff has been recognized as the originator of the concept in a variety of media and television publications including but not limited to:

- Appearances on Fox's Good Day and Princeton TV television shows.
- Write ups in Asbury Park Press, The Art of the CEO, Courier News. Examples attached as **Exhibit A**.

Defendants Improperly Games The System And Infringe The Trademark

17. Without permission, but with explicit knowledge of the Trademark (due to notice provided by Plaintiff, Mr. Caiola and otherwise), Defendants market, promote and distribute the Infringing Game and operates the Infringing Website. The Infringing Game and the Infringing Website both target a national audience using the Trademark of Plaintiff.

18. As set forth herein, Defendants and the Infringing Website constantly and consistently engage in mimicking and copying the WYOM Game, the Trademark and efforts to trade off of Plaintiff's marketing and goodwill. For example, the WYOM Game is marketed as the "original" game in this space – as indicated on much of its packaging and the Website. Being aware of this marketing, Defendants also use the word "original" to market itself online to assure top search results when someone searches for "Watch Yo Mouth" on Google, the text of the search results includes results showing the Infringing Game, which is listed as the "original." Yet, when the Infringing Website itself is viewed, the term "original" does not appear (as it would be false), and instead, the term "authentic" is used to describe the Infringing Game. The foregoing sleight of hand is accomplished by Defendants having the term "original" imbedded into its Infringing Website (typically by using a SEO (Search Engine Optimization) company) in a manner which cannot be viewed by the consumer except in connection with search results, and in a manner which would also drive traffic to the Infringing Website in the event anyone searched for the "original" game. That is, Defendants are using technology to blatantly trade off of Plaintiff's goodwill. **Exhibit B.**

19. Upon information and belief, after seeing advertising for the WYOM Game, Defendants attempted to crowd fund the Infringing Game through a Kickstarter campaign beginning on May 24, 2016 – weeks after Plaintiff had begun advertising and marketing the WYOM Game, and indeed, after Plaintiff had sold many copies of the WYOM Game under the Trademark. **Exhibit C.**

20. Upon information and belief, as further evidence that Defendants were inspired to create the Infringing Game, Infringing Mark, and Infringing Website after seeing the WYOM Game and Trademark, Defendants have told a number of inconsistent background stories as to

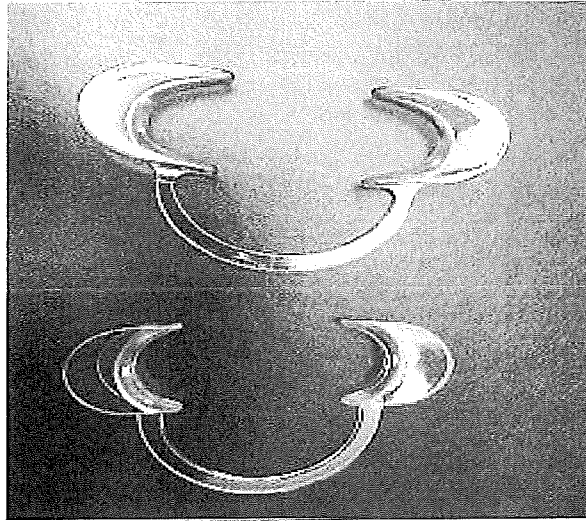
the purported origins of the Infringing Game. On Defendants' Kickstarter campaign (intended to raise funds to develop the Infringing Game), Defendants claimed that the origin of the Infringing Game occurred when the founder was "watching a family member get her teeth whitened." Later, in a January 18, 2017 news article, Defendants stated that the Infringing Game was inspired by a scene in the movie "The Boss." **Exhibit D.**

**Similarities Between The Infringing Game/Infringing Mark
And The WYOM Game/Trademark**

21. The following are examples of similarities between the Infringing Game/Infringing Mark and the WYOM Game/Trademark – all the result of Defendants' intentional acts at trading off of Plaintiff's goodwill and marketing success – which deliberately cause consumer confusion, mislead and deceive the consuming public, trade off of Plaintiff's goodwill in the Trademark, and cause damages to Plaintiff and its business under the Trademark:

- a. The Infringing Website targets the exact same audience – the board game playing public.
- b. The Infringing Game, Infringing Mark and Infringing Website are extremely similar in sound to the WYOM Game/Trademark. Indeed, the only difference is the Defendants' substitution of the letter "a" for the letter "o" in the second word: "Watch Yo Mouth" (the Trademark) versus "Watch Ya Mouth" (the Infringing Mark).
- c. The look and appearance of the Trademark and Website and Defendants' use of the same (including through focus on a cheek retractor in Defendants' logo just as used in Plaintiff's logo).
- d. Defendants have copied Plaintiff's game card themes by also releasing a family friendly and an adult/NSFW version. **Exhibit E.**

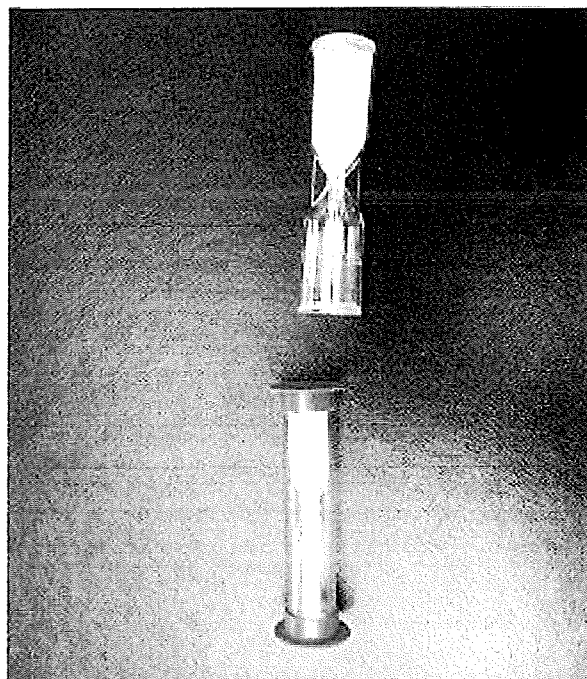
e. Defendants' mouthpiece (bottom image) is nearly indistinguishable from Plaintiff's mouthpiece (top image). Defendants simply changed the color, and appear to use cheaper materials which are indistinguishable to the eye.



f. All of Defendants' game cards include the name and logo for "Watch Ya Mouth," just as Plaintiff's game cards all include the Trademark and "Watch Yo Mouth" name and logo (which logo was copied by Defendants).



g. Defendants (bottom image) copied Plaintiff (top image) in also using a sand timer to limit the amount of time players have to say and guess the phrases.



h. Both the WYOM Game and the Infringing Game are sold at similar, relatively inexpensive price points: roughly \$10.00 (expansion packs) to roughly \$25.00 (full games).

i. Defendants misappropriated the general “themes” contained in Plaintiff’s marketing to heighten customer confusion including through the January 24, 2017 Facebook posting of a picture with a cat and the Infringing Game after Plaintiff had posted a similar picture on December 14, 2016.





Plaintiff Learns Of And Immediately Objects To Defendants' Infringement And Unfair Competition

22. Upon learning the existence of Defendants and their infringement of the Trademark, in late May/early June 2016, Plaintiff (though Mr. Caiola) reached out to Defendant Peter Denbigh and objected to the infringement and demanded that Defendants cease and desist. Plaintiff, through counsel, also considered whether a practical resolution could be reached in lieu of litigation.

23. At no time during these discussions or otherwise were Defendants granted any right or license to use the Trademark, to trade off of the WYOM Game and the Trademark, or to copy and incorporate Plaintiff's intellectual property into Defendants' product.

24. It appears that Defendants used these discussions to stall for time, during which Defendants could continue to infringe the Trademark and obtain a free ride on Plaintiff's advertising and efforts, as well as the goodwill of Plaintiff and the Trademark.

Proceedings Before The U.S. Patent And Trademark Office

25. Taking its misappropriation a step further, Defendant Peter Denbigh filed an application with the U.S. Patent and Trademark Office (“USPTO”) to register the Infringing Mark on May 20, 2016. **Exhibit F.**

26. Defendants’ trademark registration application with the USPTO was without merit, misleading, and contained knowingly false information.

27. Defendants’ application for trademark registration was filed as “intent to use.” Thus, Defendants were acknowledging under oath that as of May 20, 2016, Defendants were not even using the Infringing Mark in commerce.

28. As of the time Defendants submitted their application to register the Infringing Mark, Defendants were explicitly aware of the existence of the Trademark, and that Defendants’ Infringing Mark copied and infringed upon the Trademark, and that the use of the Trademark in commerce pre-existed not only Defendants’ intent to use the Infringing Mark, but the actual use of the Infringing Mark in commerce.

29. Plaintiff has obtained an extension of time to oppose Defendants’ trademark registration application with the USPTO. Pursuant to this extension, Plaintiff has until February 8, 2017, to oppose Defendants’ application. Plaintiff intends on opposing Defendants’ application and seeking a stay of the USPTO’s consideration of Defendants’ application until such time as this Court rules on the issue.

**Defendants’ Actions Caused (And Continue To Cause)
Actual Confusion In The Marketplace**

30. Defendants’ use of the Infringing Game, Infringing Mark and Infringing Website has resulted in, and will continue to result in, significant consumer confusion amongst the

consuming public as to the source of goods and services being offered, and has tarnished Plaintiff's business, reputation and the goodwill established in the Trademark.

31. Specifically, both before and after the Infringing Game was first shipped, Defendants have, without permission, copied Plaintiff's tone, efforts, trade dress, appearance and content in trying to intentionally confuse the consuming public about the origin of the Infringing Game – a goal of which Defendants have unfortunately succeeded.

32. By way of example, as recently as January 17, 2017, Defendants have misappropriated Plaintiff's content on its Website including but not limited to copy, tone and themes used by Plaintiff in an effort to convince the consuming public that WYAM and the Infringing Game and Infringing Website are from the same commercial source. **Exhibit G.**

33. As further example of Defendants' improper exploitation and trade on the good will, trade dress and image of Plaintiff including the Trademark, in or about July 2016, Defendants shared a video on Twitter wherein they advertised to the public that individuals were playing the Infringing Game when in fact they were playing Plaintiff's WYOM Game – explicitly and intentionally confusing the public to trade on the back of Plaintiff without permission or authority. At the time the video was posted, Defendants had not yet shipped any units of the Infringing Game. **Exhibit H.**

34. When Plaintiff – through Mr. Caiola – advised Defendants of this infringement, the video was taken down – an admission that they were damaging Plaintiff. In addition to copyright infringement, this additional action is further indisputable evidence of Defendants' effort to improperly trade on the goodwill and temporal and financial investments made by Plaintiff in its brand and business including but not limited to the Trademark.

35. There is even a spoof/fraudulent website – www.watchyomouthshop.com – that siphons web traffic from the Website and directs customers to the Twitter and Facebook pages for WYAM – further confusing the public and causing damage to Plaintiff. **Exhibit I.**

36. The most shocking example of confusion in the marketplace flows from the fact that a consumer of Defendants' inferior Infringing Game was injured by same and has reached out to WYOM threatening legal action as a result of the alleged injuries. The consumer provided proof that they purchased the Infringing Game – **NOT THE WYOM GAME** – but the damage to Plaintiff in the marketplace is ongoing and material. **Exhibit J.**

37. Further examples of consumer and retailer confusion have occurred as follows (through January 15, 2017):

- Defendants' customers emailing Plaintiff for support: 53
- Defendants' customers emailing Plaintiff relative to defects with the Infringing Game: 12
- Defendants' customers playing the Infringing Game, but hashtagging/tagging the WYOM Game or WYOM in photos: 45
- News Outlets contacting Plaintiff mistakenly thinking they produce the Infringing Game: 2
- Retailers contacting Plaintiff mistakenly thinking they produce the Infringing Game: 2.

The Retailer confusion is particularly noteworthy as not only are they sophisticated, but one retailer was mistaken even after exchanging Purchase Orders and Invoices with Plaintiff.

Plaintiff Has Made Significant Investments In The Trademark And Goodwill

38. Since inception, Plaintiff has made significant temporal and financial investments in growing the business and the Trademark. Additionally, Mr. Caiola resigned from his full time job to direct all resources and effort to WYOM.

39. From inception to present, Plaintiff has employed as many as nine (9) employees whose employment depends on the protection of the Trademark and Plaintiff's brand.

40. From May 2016 to date, Plaintiff has invested approximately \$45,000 in global marketing campaigns through Google; Facebook; Instagram; Amazon Marketing; PR Agencies; viral marketing campaigns; and through travel to trade and game shows throughout the nation.

41. These efforts have resulted in sales to date of approximately \$1.3 million which is comprised of approximately 50,000 units of the WYOM Game. Of note, the WYOM Game was the #1 product in over 100 Showcase stores in Canada during Christmas 2016.

42. Defendants' use of the Infringing Mark, Infringing Website, and Infringing Game (which, per customer complaints to Plaintiff, is an inferior product that is often littered with misspellings and duplicate cards) constitutes an infringement upon Plaintiff's Trademark and rights therein (including goodwill) and Defendants' attempt to profit from the unauthorized use of Plaintiff's Trademark and the rights therein is a direct violation of United States Trademark Law and State Common Law, including unfair competition.

43. Defendants' continued use of the Infringing Game, Infringing Mark and Infringing Website have damaged Plaintiff's interest in the Trademark, and will continue to do so, by, among other things:

A. Continuing to cause consumer confusion as to the source of the products provided under the Trademark;

B. Continuing to cause retailer confusion as to the source of the products provided under the Trademark;

C. Continuing to damage the valuable and significant goodwill that Plaintiff has established in its Trademark;

D. Continuing to unfairly compete with Plaintiff's business by engaging in all of the foregoing activities as set forth herein; and

E. Threatening to further trade upon the Trademark and Plaintiff's goodwill, thereby causing further damage to the valuable and significant goodwill Plaintiff has in the Trademark and its business.

44. The wrongful activities of Defendants are causing and will continue to cause severe and irrevocable injury to Plaintiff, including but not limited to, Plaintiff's rights in and to its Trademark and business.

45. Defendants continue to use the infringing and confusingly similar Infringing Mark in connection with the Infringing Game and the Infringing Website and, as stated at length above, that usage is causing actual and likely confusion amongst the consuming public and retailers.

46. The use by Defendants of Plaintiff's Trademark has been willful and deliberate, designed specifically to improperly trade upon the goodwill associated with Plaintiff's name and the Trademark.

47. Plaintiff's goodwill is of enormous value and Plaintiff will suffer irreparable harm, should this use and infringement be allowed to continue to the detriment of Plaintiff's reputation and goodwill.

48. Given past efforts, Defendants' unfair competition and use of the Trademark will continue unless enjoined by this Court.

COUNT ONE

**Federal Unfair Competition and
False Description/Designation of Origin – 15 U.S.C. §1125(a)**

49. This cause of action arises under 15 U.S.C. § 1125(a) for unfair competition and false designation of the origin of services and false description and representation.

50. By reason of the foregoing acts of Defendants stated in the preceding paragraphs (including, but not limited to, through the Infringing Game, Infringing Mark and Infringing Website), Defendants have falsely designated the origin of their services and goods in their marketing and have otherwise made false descriptions and representations of the origin of such services and goods.

51. Defendants' unauthorized activities are likely to create (and have created) confusion among the consuming public, are likely to deceive purchasers of Plaintiff's products, as well as its advertisers, concerning the source or sponsorship of such goods and services, and will otherwise mislead the consuming public as to the origin of the goods and services sold by or on behalf of Defendants.

52. Defendants' intentional, willful and bad faith intent to trade on Plaintiff's good will and create the false and misleading impression that Defendants are affiliated, connected or associated with Plaintiff – through Trademark and otherwise – is in violation of 15 U.S.C. § 1125(a).

53. By reason of the foregoing, Plaintiff has suffered and will continue to suffer substantial and irreparable damage, including damage to its valuable Trademark rights.

SECOND COUNT

Common Law Unfair Competition

54. Plaintiff repeats and realleges each and every allegation contained in the prior paragraphs of this Complaint as if fully set forth at length herein.

55. This cause of action arises under the Common Law of Unfair Competition over which this Court has jurisdiction by virtue of 28 U.S.C. § 1338 and § 1367 and by the principles of supplemental jurisdiction.

56. Plaintiff has common law rights in its Trademark which is uniquely associated with Plaintiff as to the source of the goods offered in connection with the Trademark.

57. Defendants have made false and misleading representations, including those set forth above, to Plaintiff's current and prospective customers. Defendants' conduct as aforesaid (including, but not limited to, through the Infringing Game, Infringing Mark and Infringing Website) constitutes unfair methods of competition and unfair and deceptive acts and practices in the conduct of its trade in violation of the New Jersey common law of unfair competition.

58. By reason of the foregoing, Plaintiff has been caused to suffer and will continue to suffer substantial damages, including damage to its valuable Trademark rights.

THIRD COUNT

Statutory Unfair Competition in Violation of the New Jersey Fair Trade Act – N.J.S.A. §56:4-1, et seq.

59. Plaintiff repeats and realleges each and every allegation contained in the prior paragraphs of this Complaint as if fully set forth at length herein.

60. Defendants' conduct as aforesaid (including, but not limited to, through the Infringing Game, Infringing Mark and Infringing Website) constitutes unfair methods of

competition and unfair and deceptive acts and practices in the conduct of its trade in violation of New Jersey statutory and common law.

61. As stated in the preceding paragraphs, Defendants have, in violation of New Jersey statutes (including N.J.S.A. §56:4-1, et seq.), misappropriated Plaintiff's Trademark, brand, reputation and goodwill for their own use in the Infringing Game, Infringing Mark and Infringing Website to Plaintiff's detriment.

62. By reason of the foregoing, Plaintiff has been caused to suffer and will continue to suffer substantial damages, including damage to its valuable trademark rights.

FOURTH COUNT

Statutory Unfair Competition in Violation of the New Jersey Trade Names, Trade-Marks and Unfair Trade Practices Act - N.J.S.A. §56:3-13.16(a)(1)-(2)

63. Plaintiff repeats and realleges each and every allegation contained in the prior paragraphs of this Complaint as if fully set forth at length herein.

64. Defendants' conduct as aforesaid set forth constitutes unfair methods of competition and unfair and deceptive acts and practices in the conduct of their trade in violation of statute and common law.

65. Specifically, the Defendants (through the Infringing Game, Infringing Mark and Infringing Website) have, in violation of New Jersey statutes (including N.J.S.A. §56:3-13.16(a)(1)-(2)), engaged in reproduction, counterfeit, copy, or colorable imitation of Plaintiff's Trademark in connection with the sale of goods which is likely to cause confusion or mistake or to deceive as to the source of origin of the goods or services.

66. Defendants' actions have caused consumer confusion in the marketplace.

67. By reason of the foregoing, Plaintiff has been caused to suffer and will continue to suffer substantial damages, including damage to its valuable trademark rights.

FIFTH COUNT

False Designation of Origin Under State Law

68. Plaintiff repeats and realleges each and every allegation contained in the prior paragraphs of this Complaint as if fully set forth at length herein.

69. By virtue of the extensive use, advertising, and promotion of the Trademark and the goodwill associated with that name, the Trademark has come to serve as a designation of origin of Plaintiff and its activities, and is a symbol of the goodwill which has been established for these activities.

70. Defendants' false and intentional use of the Trademark constitutes false designation of origin and is likely to mislead and deceive the trade and public into believing that the activities of Defendants originate from, are affiliated with, or sponsored, authorized, approved, or sanctioned by Plaintiff.

71. Defendants' wrongful acts are in violation of New Jersey law.

72. By virtue of the prior notice, and Defendants' refusal to cease and desist in the use of the Trademark, Defendants' wrongful acts were committed willfully and intentionally.

73. By reason of the foregoing, Plaintiff has been caused to suffer and will continue to suffer substantial damages, including damage to its valuable trademark rights.

SIXTH COUNT

Declaratory Judgment

74. Plaintiff repeats and realleges each and every allegation contained in the prior paragraphs of this Complaint as if fully set forth at length herein.

75. By reason of the foregoing acts of Defendants stated in the preceding paragraphs (including, but not limited to, through the Infringing Game, Infringing Mark and Infringing Website), Defendants have falsely designated the origin of their services and goods in their marketing and have otherwise made false descriptions and representations of the origin of such services and goods.

76. Defendants' unauthorized activities have created confusion among the consuming public, are likely to deceive purchasers of Plaintiff's products, as well as its advertisers, concerning the source or sponsorship of such goods and services, and will otherwise mislead the consuming public as to the origin of the goods and services sold by or on behalf of Defendants.

77. Defendants' intentional, willful and bad faith intent to trade on Plaintiff's good will and create the false and misleading impression that Defendants are affiliated, connected or associated with Plaintiff – through Trademark and otherwise.

78. Plaintiff therefore seeks and is entitled to a Declaratory Judgment declaring that: (a) Plaintiff's Trademark is valid; (b) Defendants' Infringing Game, Infringing Mark and Infringing Website are violative of Plaintiff's rights and (c) Defendants' pending application before the USPTO/TTAB to register the Infringing Mark is terminated and cancelled.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. A preliminary and permanent injunction against Defendants and their officers, agents, servants, employees, licensees, agents, subsidiaries, affiliates and/or assigns and those persons in active concert or participation with them who received actual notice by personal service or otherwise:

1. Registering, owning, leasing, selling, trafficking or using the name or words "Watch Ya Mouth" or which uses or incorporates in whole or in part the Trademark "Watch Yo Mouth", however spelled, whether capitalized, abbreviated, singular or plural, printed or stylized, whether used alone or in conjunction with any word or words, and whether used in caption, text, orally, or otherwise) or any derivative thereof, or any mark which is confusingly similar to the Trademark in connection with any business, product (including the Infringing Game), marketing campaign or Internet domain name (including the Infringing Website), or as a trademark, trade name or service mark;
2. Infringing the Trademark or otherwise unfairly competing with Plaintiff;
3. Using, reproducing, advertising or promoting any slogan, mark, or name that may be calculated to represent that the products or services of Defendants or any other person are sponsored by, authorized by, or in some way associated with Plaintiff;
4. Using or reproducing any word, term, name, or symbol, or any combination thereof, on any product or in connection with any service that confuses or falsely represents or misleads, is calculated to confuse, falsely represent, or mislead, or that has the effect of confusing, falsely representing, or misleading, that the products, services, or activities of Defendants or another are in some way connected with Plaintiff, or is sponsored, approved, or licensed by Plaintiff;
5. Inducing, encouraging, aiding, abetting, or contributing to any of the aforesaid acts.

B. Ordering that Defendants shut down and cease operation of, and sales through, www.wymgame.com and any related domains owned by Defendants to the extent same is used to market, promote, sell, distribute or otherwise reference any product, name, trade name, trademark or logo in violation of, or contrary to, Section A above.

B. Ordering that Defendants immediately transfer to Plaintiff the www.wymgame.com domain name and any other domain names that incorporate the Trademark.

D. Ordering that Defendants remove all products for sale (through license or otherwise) from all brick and mortar retailers/stores including, but not limited to, any product using the name or words "Watch Ya Mouth" or which uses or incorporates in whole or in part any name, trade name, trademark or logo in violation of, or contrary to, Section A above.

E. Ordering that Defendants remove all products for sale (through license or otherwise) from online or eCommerce retailers/stores including, but not limited to, any product using the name or words "Watch Ya Mouth" or which uses or incorporates in whole or in part any name, trade name, trademark or logo in violation of, or contrary to, Section A above.

F. Ordering that Defendants cancel (and advise all distributors or retailers to cancel) all pending sales or orders of any product using the name or words "Watch Ya Mouth" or which uses or incorporates in whole or in part any name, trade name, trademark or logo in violation of, or contrary to, Section A above.

G. Ordering that Defendants pull, cancel and/or retract all marketing, advertising or promotional materials (both paper and digital) and all documents whatsoever and of whatever nature or form relative to the Infringing Game and/or using the Infringing Mark including, but not limited to, any such material using the name or words "Watch Ya Mouth" or which uses or

incorporates in whole or in part any name, trade name, trademark or logo in violation of, or contrary to, Section A above.

H. Ordering that Defendants provide Plaintiff with copies of all orders and pending orders of any product using the name or words "Watch Ya Mouth" or which uses or incorporates in whole or in part the Trademark "Watch Yo Mouth" (however spelled, whether capitalized, abbreviated, singular or plural, printed or stylized, whether used alone or in conjunction with any word or words, and whether used in caption, text, orally, or otherwise) or any derivative thereof or any mark which is confusingly similar to the Trademark.

I. Provide Plaintiff with a list of all licensees of "Watch Ya Mouth" or any product any product using the name or words "Watch Ya Mouth" or which uses or incorporates in whole or in part the Trademark "Watch Yo Mouth" (however spelled, whether capitalized, abbreviated, singular or plural, printed or stylized, whether used alone or in conjunction with any word or words, and whether used in caption, text, orally, or otherwise) or any derivative thereof or any mark which is confusingly similar to the Trademark.

J. Ordering that Defendants immediately remove all signs, of whatever nature, form, or location, which contain the Trademark or any derivations thereof (including but not limited to "Watch Ya Mouth" or any derivatives thereof), including, but not limited to, in connection with the Infringing Website, Infringing Game, the Infringing Mark, or any derivative thereof.

K. Ordering that Defendants recall from any distributors and retailers and to deliver to Plaintiff for destruction or other disposition all remaining inventory of all infringing products containing the Infringing Mark including, but not limited to, the Infringing Game and/or using the Infringing Mark including, but not limited to, any such material using the name or words

“Watch Ya Mouth” or which uses or incorporates in whole or in part any name, trade name, trademark or logo in violation of, or contrary to, Section A above.

L. Ordering that Defendants cancel, remove, and destroy all advertising, promotional materials and all documents whatsoever and of whatever nature or form which bear or contain the Trademark or any derivation thereof, including, but not limited to, in connection with the Infringing Game, Infringing Website, the Infringing Mark, or any derivative thereof.

M. Ordering that Defendants file with this Court and serve on counsel for Plaintiff within 30 days after service on Defendants of such Order, or within such period as this Court may direct, a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with Defendants’ obligations hereunder.

N. For an accounting by Defendants of their sales and profits from the period commencing on the first date it used the Trademark, including, but not limited to, in connection with the Infringing Website, the Infringing Mark, the Infringing Game or any derivative thereof through the present.

O. For an award of Defendants’ profits and Plaintiff’s damages resulting from Defendants’ unlawful activities as set forth herein.

P. A declaration that (a) Plaintiff’s Trademark is valid; (b) Defendants’ Infringing Game, Infringing Mark and Infringing Website are violative of Plaintiff’s rights and (c) Defendants’ pending application before the USPTO/TTAB to register the Infringing Mark is terminated and cancelled.

Q. For compensatory damages.

R. For an award of treble damages.

S. For an award of punitive damages due to Defendants' willful/wanton and intentional acts.

T. For an award of the reasonable attorneys' fees and cost of suit incurred by Plaintiff.

U. For such other further relief as this Court may deem equitable and proper.

BY: 

MICHAEL J. FELDMAN (MF 7889)
CHRISTIAN J. JENSEN (CJ 6100)
OlenderFeldman LLP
422 Morris Avenue
Summit, New Jersey 07901
Attorneys for Plaintiff
Watch Yo Mouth, LLC

Dated: January 31, 2017

JURY DEMAND

Pursuant to F.R.C.P. 38, Plaintiff demands a trial by jury on all issues.

CERTIFICATION PURSUANT TO L. CIV. R. 11.2

Pursuant to L. Civ. R. 11.2, I hereby certify that there is no other action pending in any Court or arbitration proceeding concerning the matter in controversy, none is contemplated, and further, I know of no other party who should be joined in this matter.

OLENDERFELDMAN LLP
Attorneys for Plaintiff

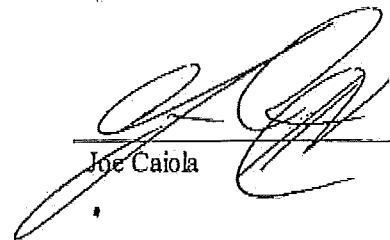
By: 

MICHAEL J. FELDMAN (MF 7889)

Dated: January 31, 2017

VERIFICATION

I, Joe Caiola, Chief Executive Officer of Plaintiff, Watch Yo Mouth, LLC, verifies under penalty of perjury pursuant to 28 U.S.C. § 1746 that the factual statements contained in the foregoing Verified Complaint are true and correct to the best of my knowledge, information and belief.



Joe Caiola

Dated: January 31, 2017

ATTORNEY CERTIFICATION

I am an attorney at law of the State of New Jersey and I am a member of OlenderFeldman LLP, attorneys for Plaintiff, Watch Yo Mouth, LLC, in the within action.

Annexed hereto is a facsimile signature of Joe Caiola. Mr. Caiola has acknowledged the genuineness of his signature.

I am filing this Certification so that the Court may accept Mr. Caiola's facsimile signature on his Verification. An original signature will be filed if requested by the Court or any party.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I may be subject to punishment.

OLENDERFELDMAN LLP
Attorneys for Plaintiff

By: 

MICHAEL J. FELDMAN (MF 7889)

Dated: January 31, 2017

EXHIBIT A

EXHIBIT B

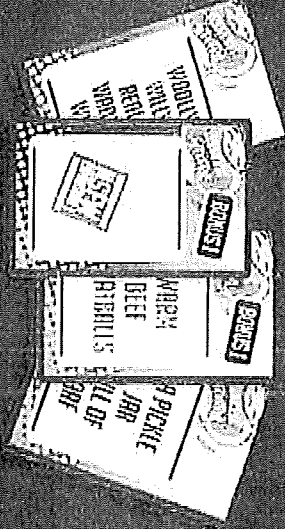
The Original Watch Ya' Mouth Game

<https://wymgame.com/> ▼

Buy The Original Watch Ya Mouth Game – A Fun Party Game for adults, family & friends to make your free time fun. Get the expansion packs of this Hilarious ...

THE AUTHENTIC...

MOUTHGUARD PARTY GAME



SHOP NOW

GET THE APP

SEND TO A FRIEND



EXHIBIT C

Watch Ya' Mouth - A Hilarious Mouthguard Party Game by ... - Kickstarter

<https://www.kickstarter.com/projects/skywatch/ya-mouth-a-hilarious-party-game> ▾

May 24, 2016 - Skyler Innovations is raising funds for Watch Ya' Mouth - A Hilarious Mouthguard Party Game on Kickstarter! Hilarious, competitive card-based ...

Rewards Campaign Updates ²³ Comments ⁹⁴ Community

Share this project ★

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Watch Ya' Mouth - The Hilarious Mouthguard Party Game

Rewards

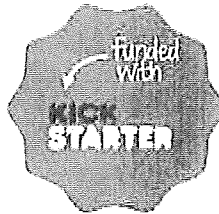
Campaign

Updates ²³

Comments ⁵⁴

Community

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ORDER

NOW!

Campaign is over and we're busy bringing this to life! Miss your chance to join in the fun? Fear not, we're accepting orders that will ship right after our Kickstarter backers get their rewards.

Click the "order now" button to get your copy reserved! Hurry! We're shipping soon!

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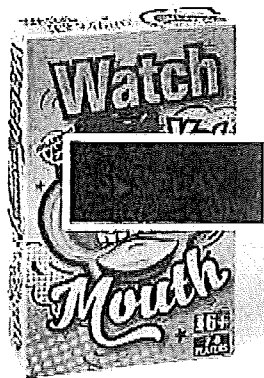
Created by

Skyler
Innovations

670 backers
pledged
\$27,586 to
help bring
this project
to life.

About this project

Support this project



Pledge \$25 or
more

THE WATCH YA'
MOUTH GAME

One copy of Watch Ya'
Mouth. (Ages 6+)

-To order multiple
decks, just ad \$25 for
each extra deck you'd

Rewards Campaign Updates 23 Comments 54 Community

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9 Stanton W... Tabletop Games

backers

States

79 backers

Quick update: Community Card Program!

Click here see our project announcement regarding your chance to have your name printed on cards that are distributed globally!

The Backstory:

The story began one afternoon about two months ago. I was watching a family member get her teeth whitened. In her mouth was a plastic cheek retractor, aka, mouthguard.

After a few hilariously awful attempts at communicating, she tried to tell me that "it's really hard to speak!" - except it came out "ithhh really hard to sheek!" I about fell over laughing, and an idea was born!

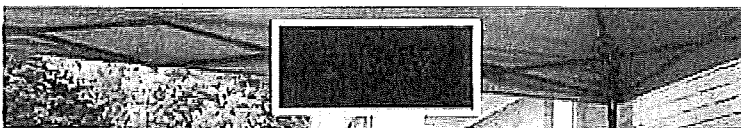
The Concept:

Watch Ya' Mouth is a simple, hilarious, card-based party game for up to 8 players (4 teams of 2 players). Players take turns trying to understand what their team mate - who is hampered by a cheek retractor (mouth guard) - is saying.

The team with the highest number of accurate interpretations at the end of four rounds wins.

Gameplay Examples:

Here's a quick video from one of our beta testers - can you figure out what she's trying to say?



Pledge \$35 or more

THE NSFW (Not Safe For Work) VERSION - WATCH YA' MOUTH GAME

One copy of Watch Ya' Mouth PLUS one copy of the NSFW Card Deck. This is a deck of bonus cards that were too risqué/vulgar to include in the kid friendly version. (Ages 18+)

-To order multiple decks, just add \$35 for each extra deck you'd like (extra shipping charges may apply)

ESTIMATED DELIVERY Aug 2016 SHIPS TO Anywhere in the world

475 backers

Pledge \$55 or more

Rewards Campaign Updates 23 Collaborators 44 Community

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(Give up? She was trying to say "Warm Beef Meatballs!")

What's a Cheek Retractor?

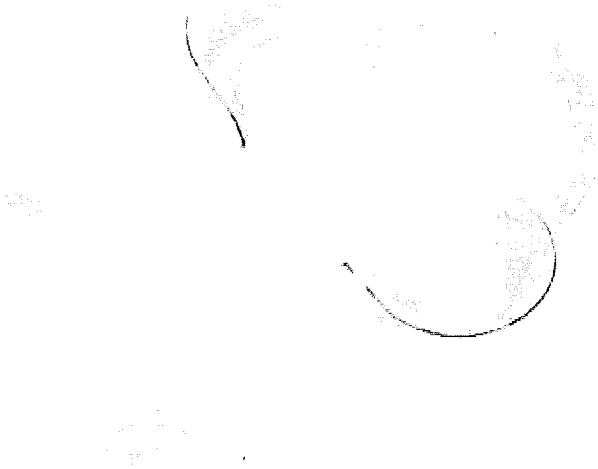
Fair question. Also called a "Mouthguard," Cheek Retractors are simple plastic devices that folks use to help hold their lips open. They easily fit in the very front of your mouth (they don't trigger gag reflexes), holding your lips open. The result is the inability to pronounce any sound that requires your lips touching - "B", "P", "V", "M", and so on.

mouth PLUS one copy of the NSFW (Not Safe For Work) Card Deck - Box Signed by the creators!

-To order multiple decks, just add \$55 for each extra deck you'd like (extra shipping charges may apply)

ESTIMATED DELIVERY	SHIPS TO
Aug 2016	Only United States

107 backers



Funding period

May 24 2016 - Jun 24 2016
(31 days)

They'll come in a few sizes and will be color coded so you know which is yours. They're dishwasher safe too so they can be easily cleaned for the next time.

The Details:

Rewards

Campaign

Updates ²³

Comments ⁵⁴

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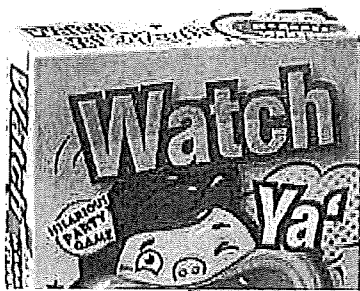
and tries to read the phrase to their team mate (the interpreter).

- The goal is for an "Interpreter" to understand what the "Reader" is trying to say.
- Your team has 2 minutes to interpret as many phrases as possible!
- 1 Round is completed when each team has gone once. For the next round, the team's rolls reverse (The reader becomes the interpreter and the interpreter becomes the reader).
- The reader has to keep trying until the interpreter gets your phrase right. In other words, you can't "pass" on a phrase. That's where it starts getting really funny.
- Some phrases are extra hard - these are worth 2 points, and are the only cards you may pass on.
- The team with the highest score after 4 rounds, wins!

The Product and Prototype:

We're ready to rock - we have manufacturing, shipping, legal, financial, and all those details squared away. We have several sets of fully functional prototypes, and we've proven time and time again that we can deliver on the side-splitting humor of the game. Here are some examples of the physical components:

Package:



Reviews

Campaign

Updates 23

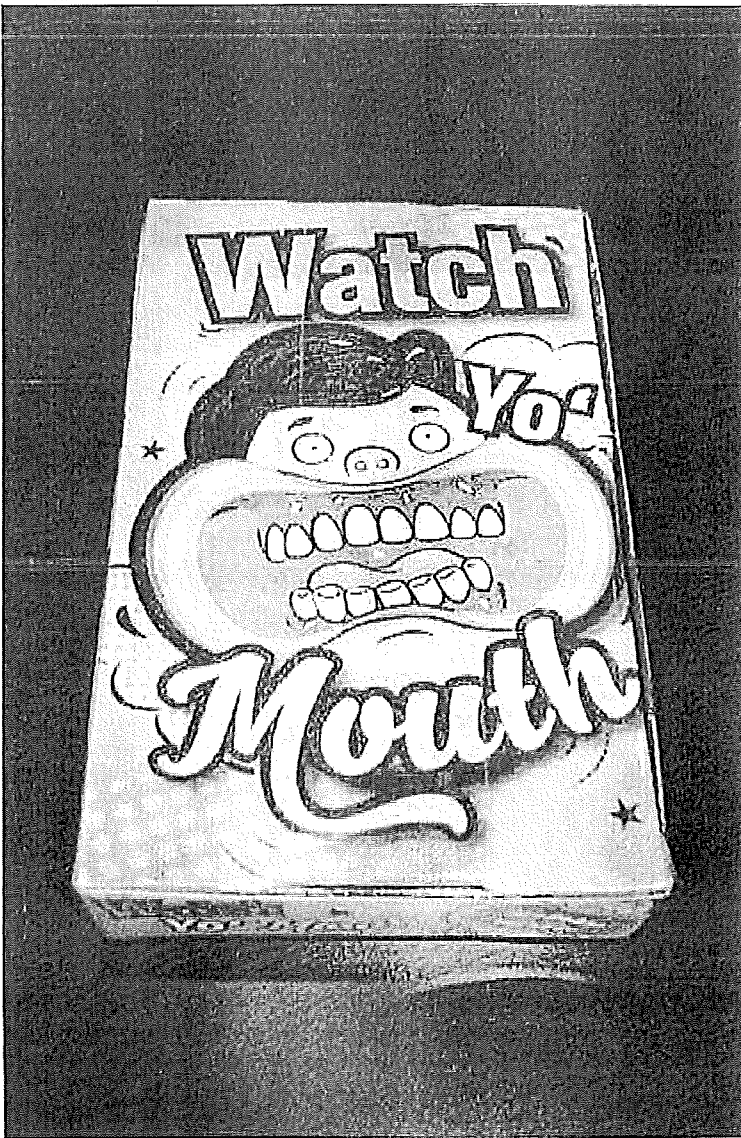
Comments 64

Community

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Mockup



Reviews

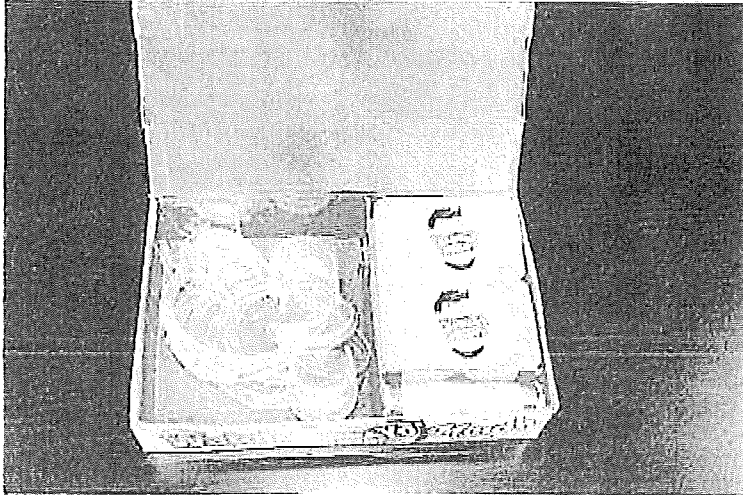
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Items in Envelope Box

The cards:

Cards are thick, full color, glossy finish

PAMPERS DIAPERS
FULL OF POOP



Card Example

Rewards

Campaign

Updates 29

Comments 54

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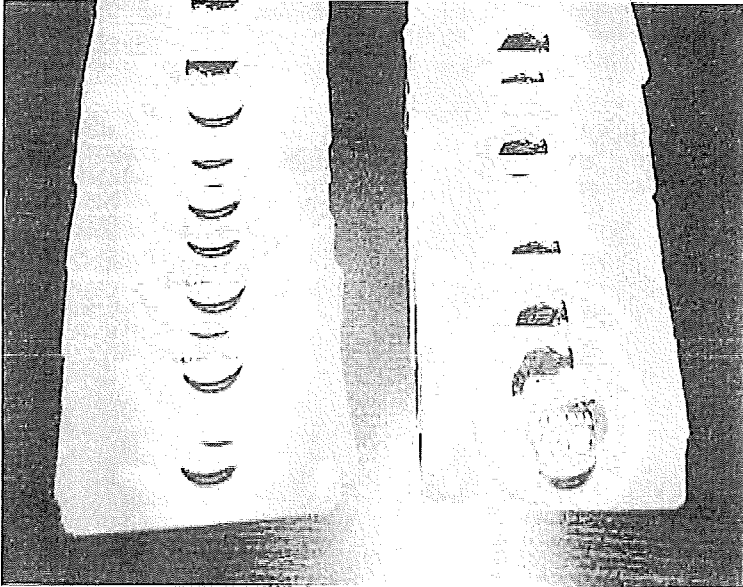
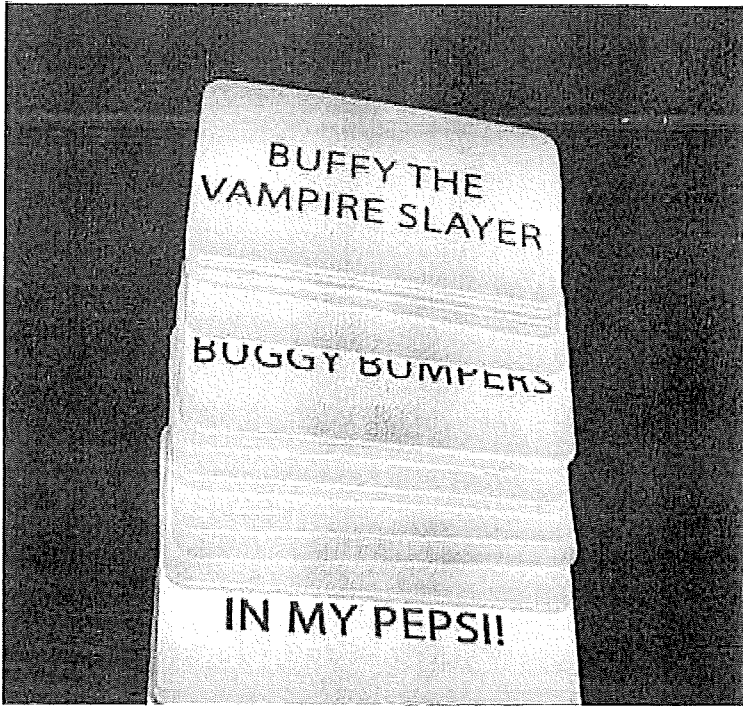
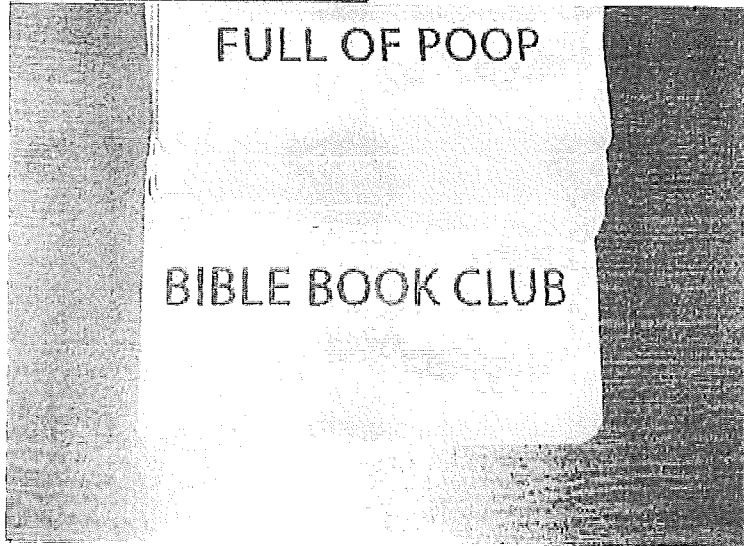


Photo of Mouthguard



Reviews Campaign Updates 23 Comments 54 Community

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Sample image of a party game (Family Game Night)

The timer:
Straightforward 2-minute sand timer



The Retractors:
At least 10 safe, multicolored cheek retractors in at least 2 sizes

Rewards Campaign Updates ²³ Comments ⁵⁴ Community

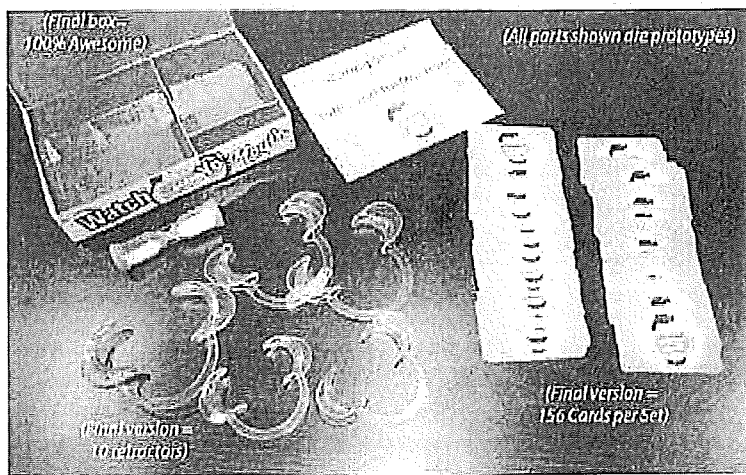
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What comes with the game:

- 143 cards (~3 decks) of tested, hilarious phrases with varying difficulty (NSFW version gets an additional 143 cards for a total of 286)
- 10 cheek retractors - 5 small and 5 large of varying colors (so you don't get them mixed up). These are dental-quality, dishwasher safe appliances that fit both small and big mouths (you know you you are!).
- 1-minute sand timer
- Scoring Sheet
- Instructions
- Box

Here's the full collection of goodies:



Reviews

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The game is available in two versions:

1. A "Family Friendly" version. Think of phrases like "Warm Beef Meatballs", "Pampers Diapers Full of Poop", and "There's a Wasp In my Pepsi!". Perfect for anyone 6 to 160 years old looking for good, clean fun.
2. A "NSFW", or "Not safe for work" version - ie, it gets bit risque with topics and language. We don't hold back and anything is fair game. ...It's probably twice as funny as a result.

Two Gameplay Approaches:

1. "Open Season" - meaning you can try to drop hints, make motions, wave your arms like mad, do an interpretive dance, or whatever else your group feels is fair to get your point across.
2. "Legit" - No hints, no actions - strictly saying the phrase and figuring it out. It's tough!

A Final Note:

This is not our first rodeo with bringing ideas to life and products to the market. We'll take the rough prototypes and turn them into beautiful, commercial-ready products. What you see in these pictures are simply prototypes that we've made to prove this concept works. If you help us by funding this campaign, what you see will turn into high quality, 100% finished and beautiful versions. We'll physically the factories to ensure they are right, and we'll not stop until these are 100% awesome.

Ready to laugh your A off?**

So if you're into side-splitting fun, have a capacity for a little self-deprecating humor, and like to laugh with your friends,

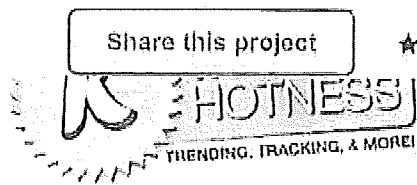
Rewards

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Community



Risks and challenges

Production of the game is simple: it's just a card game with a few extra parts. Other than building the box it's a relatively straightforward product to make. The biggest challenge for us would actually be if you blow us out of the water - but we're ready for that too. We're already working with fulfillment powerhouses like Shipwire and Amazon to make sure that no matter how many people pledge, everyone gets their game quickly after the campaign ends. None of us want this to be a campaign where you spend the next two years getting fifty emails about production updates and delays. If you back this project, we want to be sure you can start your Watch Ya' Mouth parties ASAP. This is why we're not offering t-shirts or other complicated reward tiers that would make the distribution process take a lot longer. We're keeping it as simple as possible: support our project and in return we'll send you the hilarious, playable game.

[Learn about accountability on Kickstarter](#)

FAQ

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- > Wholesale accounts?
- > What's next? Any stretch goals or expansion packs?

Ask a question

Support this project on Kickstarter

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Updates ²³

Comments ⁴¹

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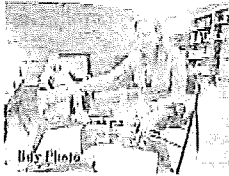
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EXHIBIT D

How 'Watch Ya Mouth' was born in Staunton

Laura Peters, lpeters@newsleader.com Published 2:45 p.m. ET Jan. 18, 2017 | Updated 3:09 p.m. ET Jan. 18, 2017



(Photo: Mike Tapp/The News Leader)

STAUNTON - It took one scene in a movie to inspire a giant enterprise for Peter and Alison Denbigh.

The two Staunton residents started their empire out of their home. Not even a year later, it has grown global.

Peter and Alison Denbigh made a game called "Watch Ya Mouth" that has swept not only the entire country, but the world. It has become a number one best seller on Amazon and they have sold hundreds of thousands of games.



"Watch Ya Mouth" is a game created by Peter and Alison Denbigh who are graduates of James Madison University and residents of Staunton. (Photo: Mike Tapp/The News Leader)

Peter said the two had been watching the movie "The Boss" when a scene came on where actress Melissa McCarthy is getting her teeth whitened. In order to do so, she had to put in these awkward mouth retractors, which makes it almost impossible to talk.

"She was trying to talk and it was really funny," Peter said. "We decided this could be more than just a funny moment."

The way it works is people either divide up in teams or play all together for points. The goal is to understand what people are saying with the mouth retractors in their mouths, which is challenging. For Peter and Alison, they've had enough practice that they've gotten really good. The words said with the mouth retractors in are pretty understandable.

"It's not a brain game, there's not any strategy," Peter said.

A person has one minute to go through as many cards that have phrases on them, which range between one and two points.

Alison is the big board game lover. So, the couple has always spent time playing games with friends and family.

"We have an entire closet full of games," Peter said.

"I have a fascination with games," Alison added.

[Haunted mill attraction comes to Dooms](http://www.newsleader.com/story/news/local/2017/01/17/haunted-mill-attraction-comes-dooms/96612580/)
(<http://www.newsleader.com/story/news/local/2017/01/17/haunted-mill-attraction-comes-dooms/96612580/>)

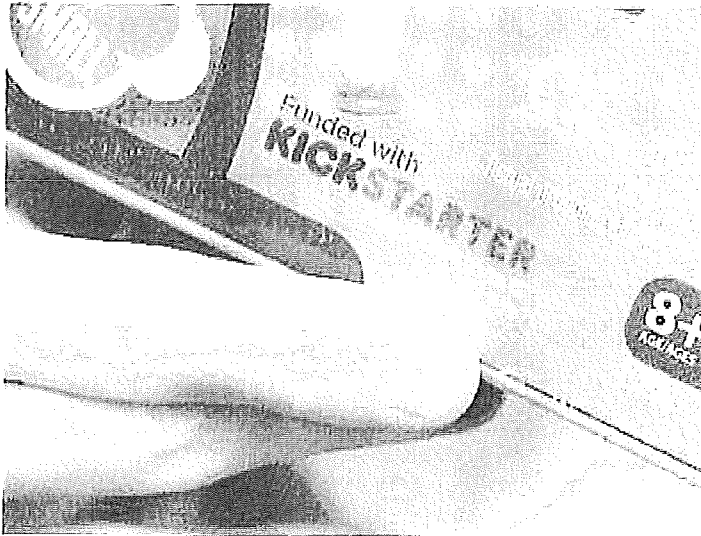
After watching that movie, the ideas started to come flying in. From there a Kickstarter campaign was started in May 2015. The couple began to check out different mouth retractors and the safety of them and traveled to China to research different manufacturers.

Their goal was to raise \$6,000 to make the first batch of the game. It was one of the only successful Kickstarter campaigns that Peter has done.

As the Kickstarter campaign ended in June, the couple began sending out games to those who were part of the campaign and finding ways to make more and jumpstart the process of getting it into larger stores in time for the holidays.

"It's been really quite a ride," Peter said. "I've been involved in small business all my life. I've learned a lot about how to take an idea to the market. It was my goal to make this an exercise in execution."

[The Findells record for Tiny Desk Contest](http://www.newsleader.com/videos/entertainment/2017/01/18/-findells-record-tiny-desk-contest/96718150/?from=global&sessionKey=&autologin=)
(<http://www.newsleader.com/videos/entertainment/2017/01/18/-findells-record-tiny-desk-contest/96718150/?from=global&sessionKey=&autologin=>)



On the back of a box for the game, "Watch Ya Mouth," is printed "Proudly developed in Staunton, Va." (Photo: Mike Tripp/The News Leader)

What started as a two-person team has now expanded to eight — five of them local. In the beginning they had family members and friends help with packaging and shipping out the product.

"It was really fun to be starting this business out of our garage," Peter said.

"It's the American dream," Alison added.

Going from a small online marketing campaign, the game started to pick up speed as soon as people started posting videos of them playing the game. It basically went viral, they said.

The game is now a part of the Amazon Launchpad program, which helps startups get going by teaching them the ins and outs of how selling on Amazon works. There are now expansion packs, an adult version of the game and even a phone app that people can use.

Buy Photo



An app available that can be used with the game, "Watch Ya Mouth." (Photo: Mike Tripp/The News Leader)

The couple has called the Shenandoah Valley home for more than a decade and are also James Madison University graduates. What the Denbighs find so special is that this big game came from small beginnings.

"I grew up in small town West Virginia and moved to Harrisonburg and now live in Staunton," Peter said. "This type of idea has come out of this beautiful small town. Yet it's distributed globally."

"You don't have to live in Washington, D.C., New York City or Los Angeles to make something like this or to have something go global."

Their company, Skyler Innovations, also utilizes local companies like SupplyOne in Weyers Cave for their packaging, Reo Distribution in Waynesboro for shipping and Vector Industries in Waynesboro for direct fulfillment off the website.

Strange things have happened while playing the game, say the Debrighs. They've seen marriage proposals with people using the game, people peeling their pants playing it and dentures falling out while playing.

"What's so cool about this game is the customer experience," Peter said. "They're just laughing, just belly laughing."

"We've got the greatest stories," Alison said.

Many of the cards are submitted, too. For those who send in phrase ideas, if the couple likes them, they'll use them and put the submitter's name and location on the card itself.

Erin Blanton, co-owner of Pufforbellies in Staunton, was one of the only independent toy stores to be able to sell it. She said she is still getting feedback from people who purchased the product over the holidays — many of them said they were excited for the game and couldn't stop laughing.

"We were super excited when we found out that the game was invented locally," she said. "I had been hearing about it before I know it was invented locally. Customers were so excited that they could get the game, especially because it does have a local connection."

Now, the couple is looking to expand the product in the next few months.

They still have a lot to tackle, though.

The product is the only one out there that has a patent pending and now they are competing with knock-off brands and counterfeit products. The counterfeit issue is when someone orders a game from Amazon, but it's through a third party — not Amazon. Some customers may receive what they thought was the real thing, when it's something that's cheaply made, including cards with words spelled wrong and incorrect packaging. It's something the Debrighs are working to correct and even going as far as working with U.S. Customs to correct the problem.

"It's like Whack-a-Mole," Alison said. "We fix one and another pops up."

The Debrighs advise those purchasing through Amazon to buy directly from Amazon — not the new or used option that may seem cheaper. That's one way the two have found to avoid counterfeits.

The two will be unveiling some new things at an upcoming toy convention in New York City in February — The American International Toy Fair. For now they are busy coming up with new phrases to try to say with the mouth retractors. The bar for quality is high. But they know when they've hit upon a good one because they can't stop laughing.

Buy Photo



Peter and Allison Denbigh talk about the game they created together, "Watch Ya Mouth," during an interview in Staunton on Wednesday, Jan. 18, 2017. Together, they own Skyler Innovations with Peter serving as president and Allison as chief financial officer. (Photo: Mike Tipp/The News Leader)

Follow Laura Peters [@peterslaura](https://twitter.com/peterslaura) (<http://www.twitter.com/peterslaura>) and [@peterpants](https://www.instagram.com/peterpants) (<http://www.instagram.com/peterpants>). You can reach her at lpeters@newsleader.com (<mailto:lpeters@newsleader.com>) or 213-9125.

Read or Share this story: <http://www.newsleader.com/story/news/local/2017/01/18/watch-ya-mouth-game-staunton/96711598/>



AMERICA'S #1
MEN'S UNDERWEAR*



amazon

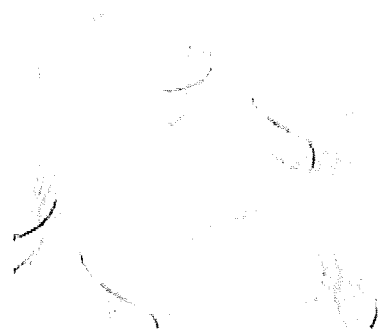
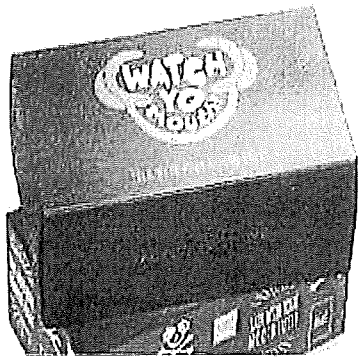
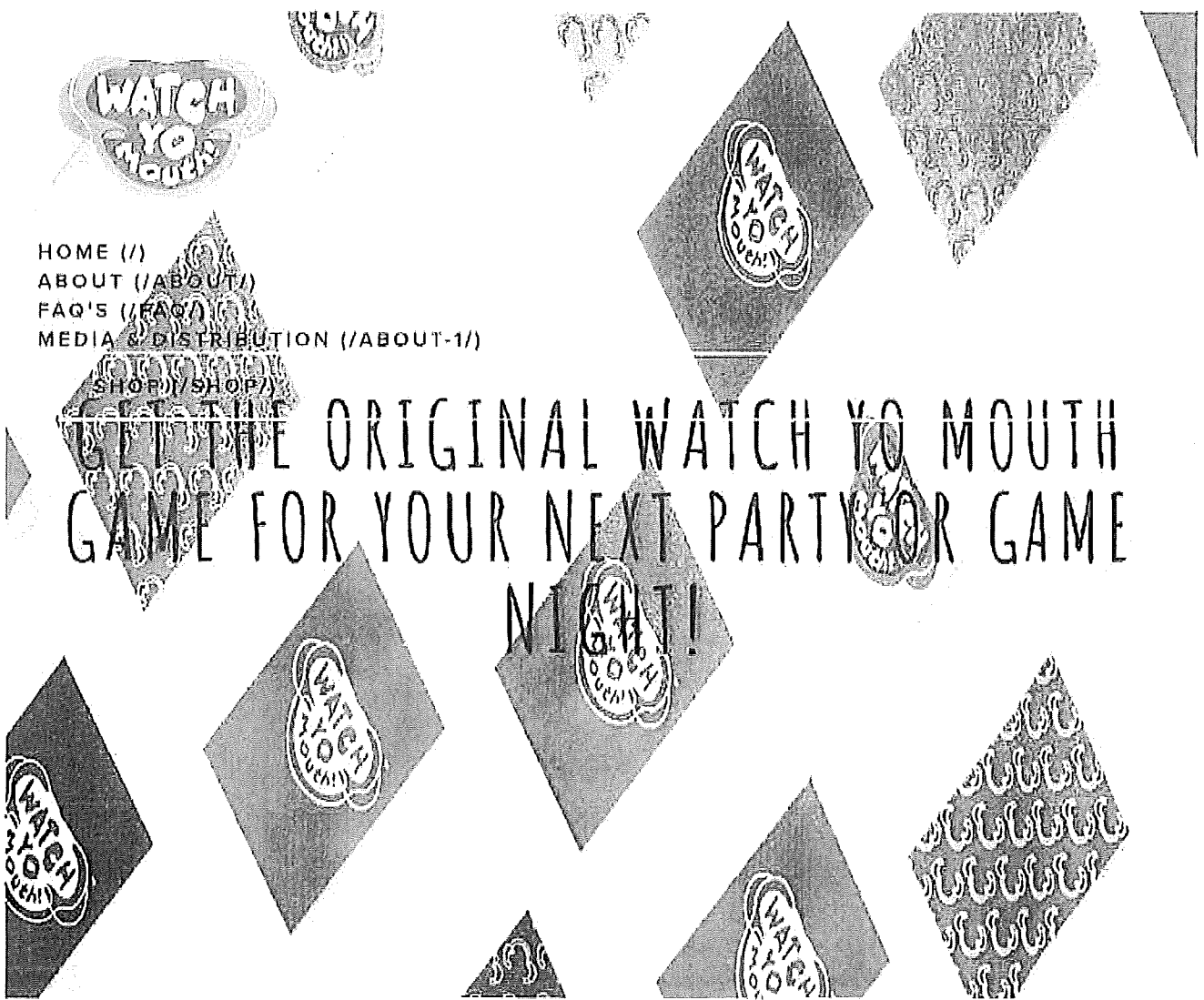
*1999-2016

EXHIBIT E

(<http://watchyomouth.com/shop/nd35esq9hqjgcy3418nysqsqk1q810>)
New Ad Lib Expansion Pack Available Now! [Click Here!](#)

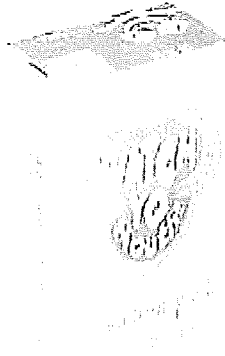
HOME (/)
ABOUT (/ABOUT/)
FAQ'S (/FAQ/)
MEDIA & DISTRIBUTION (/ABOUT-1/)

GET THE ORIGINAL WATCH YO MOUTH
GAME FOR YOUR NEXT PARTY OR GAME
NIGHT!



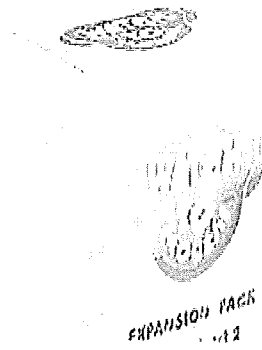
Watch Yo Mouth™
Game Pack

from \$19.99



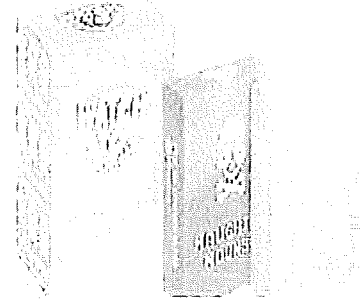
WYM Expansion Pack
V. 1.0

\$9.99



Mouth Piece
Replacement

\$9.99 \$12.99



WYM Expansion Pack
V.1.1 (X-Rated)

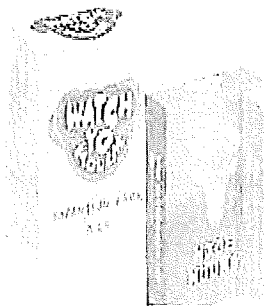
\$14.99

WYM Expansion Pack
V.1.2 (Ad Libs)

\$17.99

Holidays :: "Naughty"
Ad Libs

\$8.99 \$17.99



Holidays :: "Nice" Ad
Libs

\$8.99 \$17.99

Buy The Original Watch Ya Mouth Game

Grab your copy of the AUTHENTIC Watch Ya Mouth game and expansion pack. You can also submit a photo of photos from your last Watch Ya Mouth game playing fun.

Click on the below and learn what's in the box and find related exhibitor details.



Game
Watch Ya Mouth Game

\$19.99

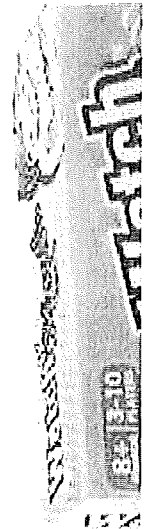
[ADD TO CART](#)



10-Pack
Watch Ya Mouth 10-Pack

\$12.99

[ADD TO CART](#)



Game
Watch Ya Mouth Game

\$9.99

[ADD TO CART](#)

EXHIBIT F

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 87044623

Filing Date: 05/20/2016

*NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Field Name	Value
MARK INFORMATION	YES
MARK	WATCH YA' MOUTH
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	WATCH YA' MOUTH
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
OWNER OF MARK	Peter Denbigh
STREET	103 E. Beverley St., Suite D
CITY	Straunton
STATE (Required for U.S. applicants)	Virginia
COUNTRY	United States
ZIP/POSTAL CODE (Required for U.S. applicants)	24401
PHONE	5404664510
LEGAL ENTITY INFORMATION	
TYPE	INDIVIDUAL
COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	028
IDENTIFICATION	Card games; Game cards; Memory games; Party games
FILING BASIS	SECTION 1(b)
ADDITIONAL STATEMENTS INFORMATION	

TRANSLATION (if applicable)	
TRANSLITERATION (if applicable)	
CLAIMED PRIOR REGISTRATION (if applicable)	
CONSENT (NAME/LIKENESS) (if applicable)	
CONCURRENT USE CLAIM (if applicable)	
ATTORNEY INFORMATION	
NAME	Jared Burden
FIRM NAME	Jared Burden PLLC
STREET	PO Box 862
CITY	Harrisonburg
STATE	Virginia
COUNTRY	United States
ZIP/POSTAL CODE	22803
PHONE	7032582678
EMAIL ADDRESS	jburden@jaredburdenlaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	
NAME	Jared Burden
FIRM NAME	Jared Burden PLLC
STREET	PO Box 862
CITY	Harrisonburg
STATE (Required for U.S. addresses)	Virginia
COUNTRY	United States
ZIP/POSTAL CODE	22803
PHONE	7032582678
EMAIL ADDRESS	jburden@jaredburdenlaw.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS Plus
NUMBER OF CLASSES	1
FEE PER CLASS	225
TOTAL FEE PAID	225
SIGNATURE INFORMATION	
SIGNATURE	//JARED BURDEN//
SIGNATORY'S NAME	Jared Burden

SIGNATORY'S POSITION	Attorney of Record and Member of Virginia Bar
SIGNATORY'S PHONE NUMBER	7032582678
DATE SIGNED	05/20/2016

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 87044623

Filing Date: 05/20/2016

To the Commissioner for Trademarks:

MARK: WATCH YA' MOUTH (Standard Characters, see [mark](#))

The literal element of the mark consists of WATCH YA' MOUTH.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Peter Donbigh, a citizen of United States, having an address of

103 E. Beverley St., Suite D
Staunton, Virginia 24401
United States
5404664510(phone)

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 028: Card games; Game cards; Memory games; Party games

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services. (15 U.S.C. Section 1051(b)).

The applicant's current Attorney Information:

Jared Burden of Jared Burden PLLC PO Box 862
Harrisonburg, Virginia 22803
United States
7032582678(phone)
jburden@jaredburdenlaw.com (authorized)

The applicant's current Correspondence Information:

Jared Burden
Jared Burden PLLC
PO Box 862
Harrisonburg, Virginia 22803
7032582678(phone)
jburden@jaredburdenlaw.com (authorized)

E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or applicant's attorney at the e-mail address provided above. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in an additional processing fee of \$50 per international class of goods/services.

A fee payment in the amount of \$225 has been submitted with the application, representing payment for 1 class(es).

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed

an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true,

Signature: //JARED BURDEN// Date Signed: 05/20/2016
Signatory's Name: Jared Burden
Signatory's Position: Attorney of Record and Member of Virginia Bar

RAM Sale Number: 87044623
RAM Accounting Date: 05/20/2016

Serial Number: 87044623
Internet Transmission Date: Fri May 20 11:56:10 EDT 2016
TEAS Stamp: USPTO/FTK-XX.XX.XX.XXX-20160520115610897
917-87044623-550839a8e535f676b1b9b64e85f
316dde35be774745e493837de6f783854bf5e91-
CC-9326-20160520114309420721


WATCH YA' MOUTH

EXHIBIT G


WYOM CHANGES CONTENT STRATEGY ON 9/1/16


- WYOM strategy changed to use more eye grabbing emojis and icons in the posts which give context clues as to what's going on
- Sand timers to demonstrate a limited time sale
- Trophies to indicate an award for the customer (like awesome job)
- Arrows to use strong direction as to where they can buy the game
- The most important point is that it was deliberate and was part of evolving marketing strategy.

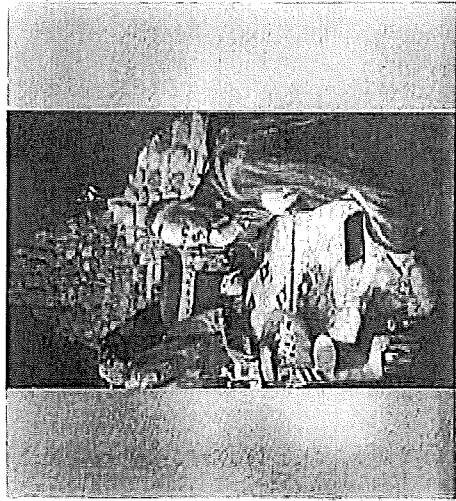
The following slide are examples of WYOM page posts changing effective September 1st


Watch Yo Mouth  the "Muna Lindsey" video.
www.watchyomouth.com

We have the best customers!


GET YOURS  www.watchyomouth.com

On Sale For A Limited Time 




Watch Yo Mouth  the Bath Clark Williams photo.
www.watchyomouth.com

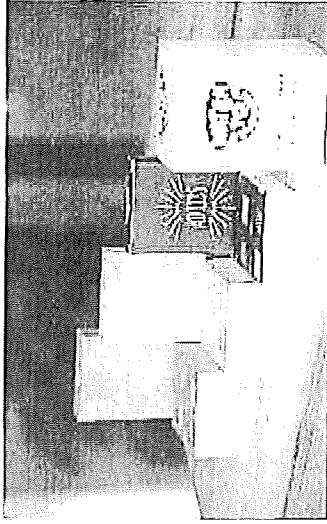
Bringing The Fam Together At Summer '15

Grab Yours  www.watchyomouth.com






Watch Yo Mouth 

If you're not prepared to lose every friend you have over a beard game, you're not playing hard enough. www.watchyomouth.com #LDW #watchyomouth



3,526 people reacted

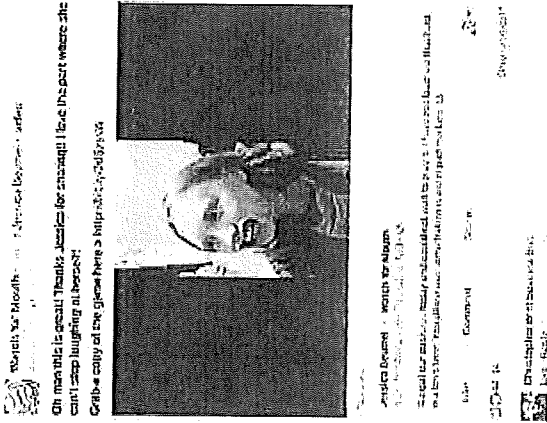
 Like  Comment  Share

View Results



WYAM starts using
an arrow
which points to its
URL (like wyom).

And even begins
using the phrase
"grab a copy of the
game here" ...
nearly identical to
wyom "Grab
Yours.."



Watch Ya' Mouth
13 likes

One of our favorites so far (I love hearing all the laughing in the background too). Watch Ya' Mouth...I mean Mouth... Grab a copy of the game here > <https://bit.ly/2zLq388>



Just a mess
Solid Davey is an awesome Harley portrait... I adore it!
12,800 retweets · 1,916 likes

My Watch Ya' Mouth game arrived, which was more of a vacation era, well, sorry, but... Debating on whether this is it's

Like Comment Share

30

View all your comments

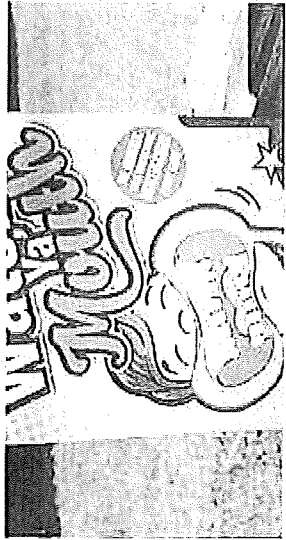
Like Comment Share

20

25 photos

Watch Ya' Mouth
13 likes

Thank you for helping us become a #1 best-selling game on @amazon! <https://i.co/DbyDSnbn>



Watch Ya' Mouth Game (@WYMG) posted a photo on Twitter

Get the whole album - and other photos from Watch Ya' Mouth Game

Like Comment Share

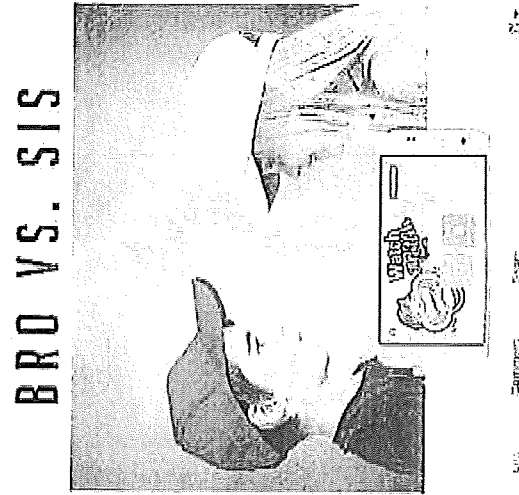
20

25 photos

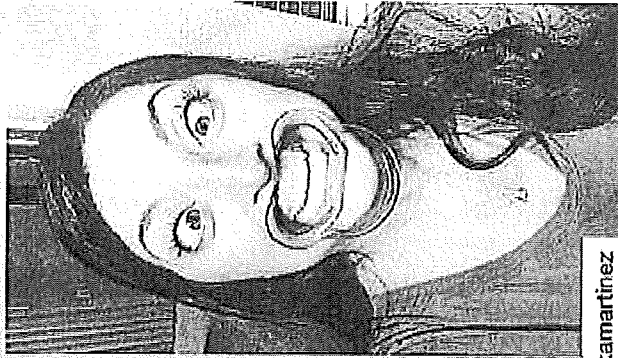
Like Comment Share

Watch Ya' Mouth
13 likes

Let the showdown begin. <https://wmg.com/>



WYOM uses "LIT" – a catchy social phrase
WYAM follow suit one week later



amartinez

watchyomouth_game

26 likes

watchyomouth_game That face you make
when it's Saturday, and it's about to be LIT
w/ Watch Ya Mouth -- #respect
xdanikamartinez with #rapstapp
Happy Saturday : watchyomouth

Tweets



Watch Ya Mouth Game

Your swag bag will be lit!

9:51 AM

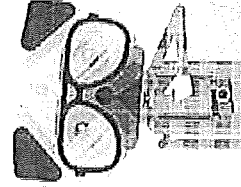


EXHIBIT H



RunyanTV

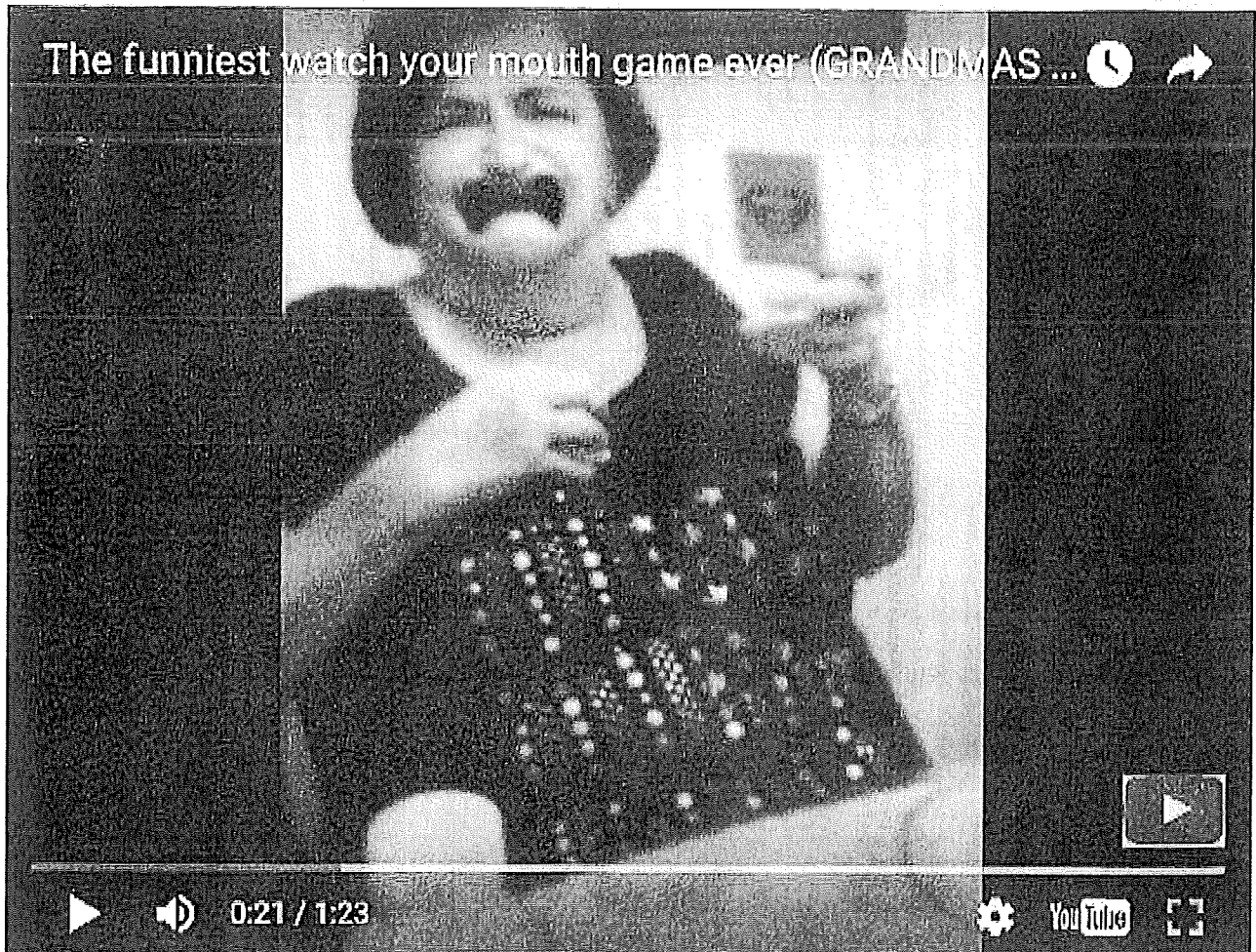
RunyanTV



Follow

@WYMGGame The funniest watch your mouth game.

grandmas teeth fall out



The funniest watch your mouth game ever (GRANDMAS TEETH FELL OUT)

My grandma playing the watch your mouth game and her teeth fell out of her mouth!

youtube.com

Home

▼ Moments

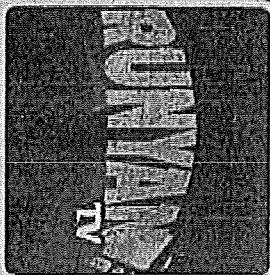
Search Twitter

Sign up or Log in

Runyantv
@Runyantv

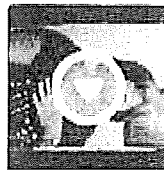
I like to record and upload orngie rolling & hilarious videos. Check me out here:
[YOUTUBE.COM/RUNYANTV](https://www.youtube.com/Runyantv)

Joined September 2014



Follow

Runyantv
@Runyantv



Follow

Game The funniest watch your mouth game. grandmas teeth fall out

The funniest watch your mouth game ever [GRANDMAS TE... My grandma playing the watch your mouth game and her teeth fell out of her mouth!

1 retweet

Watch Ya' Mouth Game ... Thanks for sharing!

Runyantv @Runyantv

Periscope Data

Create beautiful dashboards from your SQL database. Analyze billions of rows in seconds with Periscope Data.

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 [TWITTER.COM/RUNYANTV](https://twitter.com/Runyantv)
 [FACEBOOK.COM/RUNYANTV](https://facebook.com/Runyantv)
 [YOUTUBE.COM/RUNYANTV](https://youtube.com/Runyantv)

EXHIBIT I

EXHIBIT J

12/23/2017

Watch Yo' Mouth Mail - Fwd: Form Submission - connect. Compliments welcome! - Injury from game



Joe Caiola <joe@watchyomouth.com>

Fwd: Form Submission - connect. Compliments welcome! - Injury from game

5 messages

Support Team <support@watchyomouth.com>

Fri, Dec 23, 2016 at 9:44 AM

To: Joe Caiola <joe@watchyomouth.com>

Dominick
Account Executive
Watch Yo Mouth, LLC
www.watchyomouth.com

On Tue, Dec 20, 2016 at 4:51 PM, Squarespace <customercare@squarespace.info> wrote:

Name: Oullani

Email Address @yahoo.com

Subject: Injury from game

Message: Hello,

I am willing to inform you that my 16 year old daughter was playing the game, for the first time the other night, and ended up getting injuries on her gums from the plastic piece she put in her mouth. They are very painful and we are seeing her dentist to treat the injuries. I can send photos of her injuries and confirmation from her dentist confirming these injuries caused my the mouthpiece. We would like to be fairly compensated for this or we will be forced to take legal action.

Thank you,
Oullani

(Sent via Watch Yo Mouth)

Support Team <support@watchyomouth.com>

Fri, Dec 23, 2016 at 9:44 AM

To: Joe Caiola <joe@watchyomouth.com>

Dominick
Account Executive
Watch Yo Mouth, LLC
www.watchyomouth.com

----- Forwarded message -----

From: Squarespace <customercare@squarespace.info>
Date: Tue, Dec 20, 2016 at 4:51 PM
Subject: Form Submission - connect. Compliments welcome! - Injury from game
To: support@watchyomouth.com

Name: Oullani

Email Address @yahoo.com

Subject: Injury from game

1/5/2017

Watch Yo' Mouth Mail - Fwd: Form Submission - connect. Compliments welcome! - Injury from game

Message: Hello,

I am writing to inform you that my 15 year old daughter was playing the game, for the first time the other night, and ended up getting injuries on her gums from the plastic piece she put in her mouth. They are very painful and we are seeing her dentist to treat the injuries. I can send photos of her injuries and confirmation from her dentist confirming these injuries caused my the mouthpiece. We would like to be fairly compensated for this or we will be forced to take legal action.

Thank you,

Ouilian [REDACTED]

(Sent via *Watch Yo Mouth*)

Support Team <support@watchyomouth.com>
To: Joe Calola <joe@watchyomouth.com>

Wed, Dec 28, 2016 at 11:01 AM

Dominick
Account Executive
Watch Yo Mouth, LLC
www.watchyomouth.com

----- Forwarded message -----

From: Ouilian [REDACTED]@yahoo.com>

Date: Mon, Dec 26, 2016 at 9:35 PM

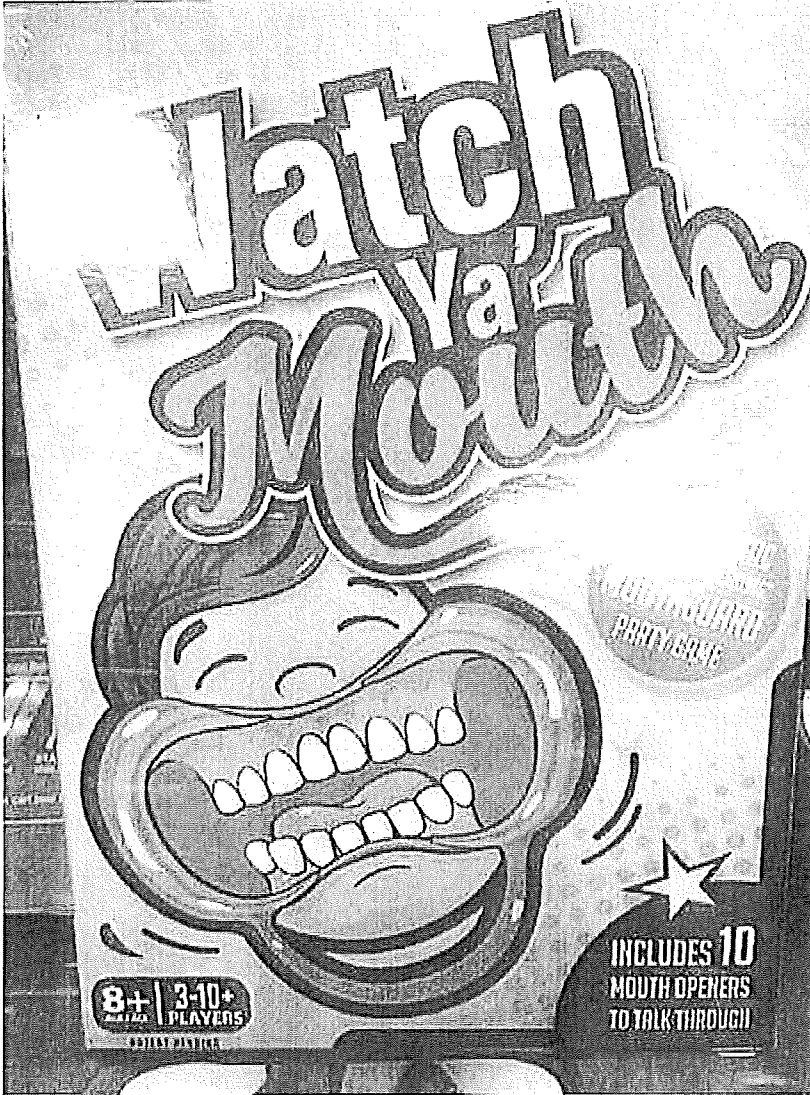
Subject: Re: Form Submission - connect. Compliments welcome! - Injury from game

To: Support Team <support@watchyomouth.com>

Yes. Here is a pic.

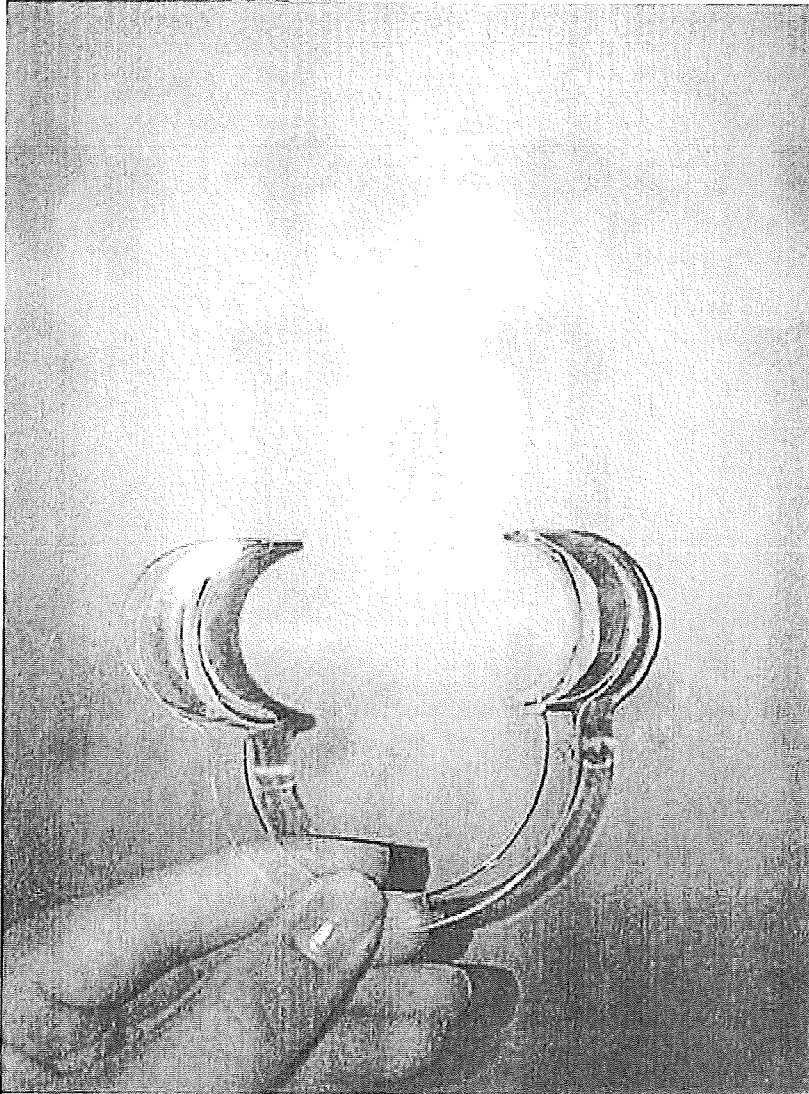
1/5/2017

Watch Yo' Mouth Mail - Fwd: Form Submission - connect. Compliments welcome! - Injury from game



1/5/2017

Watch Yo' Mouth Mail - Fwd: Form Submission - connect. Compliments welcome! - Injury from game



Sent from my iPhone

On Dec 23, 2016, at 6:21 AM, Support Team <support@watchyomouth.com> wrote:

Hi Oullani,

I'm very to hear about this. I'll put together a support ticket to forward to management, but beforehand, can you please send a picture of the game set you were using?

Thank you,

Dominick
Account Executive
Watch Yo Mouth, LLC
www.watchyomouth.com

On Tue, Dec 20, 2016 at 4:51 PM, Squarespace <customercare@squarespace.info> wrote:

Name: Oullani [REDACTED]

Email Address: [REDACTED]@yahoo.com

1/31/2017

Watch Yo' Mouth Mail - Pwd: Form Submission - connect, Compliments welcome! - Injury from game

Subject: Injury from game

Message: Hello,

I am writing to inform you that my 15 year old daughter was playing the game, for the first time the other night, and ended up getting injuries on her gums from the plastic piece she put in her mouth. They are very painful and we are seeing her dentist to treat the injuries. I can send photos of her injuries and confirmation from her dentist confirming these injuries caused by the mouthpiece. We would like to be fairly compensated for this or we will be forced to take legal action.

Thank you,
Oullani



(Sent via *Watch Yo Mouth*)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

<p>WATCH YO MOUTH, LLC, Plaintiff, -against- DENBIGH AND ASSOCIATES, LLC d/b/a SKYLER INNOVATIONS and PETER DENBIGH, Defendants.</p>	<p>ECF Civil Action No.</p>
--	--------------------------------------

PLAINTIFF WATCH YO MOUTH, LLC'S MEMORANDUM OF LAW IN SUPPORT
OF ORDER TO SHOW CAUSE SEEKING A PRELIMINARY INJUNCTION
PURSUANT TO F.R.C.P 65 AND EXPEDITED DISCOVERY

Michael J. Feldman, Esq. (MF 7889)
Christian J. Jensen, Esq. (CJ 6100)
OLENDERFELDMAN LLP
422 Morris Avenue
Summit, New Jersey 07901
(908) 964-2485

Attorneys for Plaintiff

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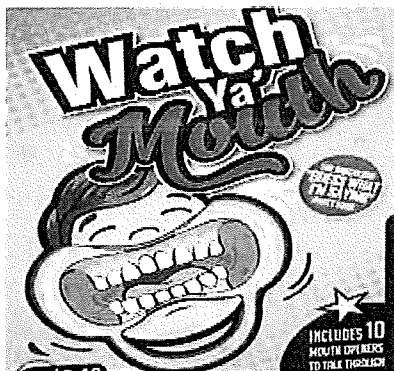
PRELIMINARY STATEMENT

Plaintiff Watch Yo Mouth, LLC (“Plaintiff”), by and through undersigned counsel, respectfully submits this Memorandum of Law in Support of its Order to Show Cause Seeking a Preliminary Injunction and expedited discovery against Defendants Denbigh and Associates, LLC d/b/a Skyler Innovations and Peter Denbigh (“Defendants”). This is an action brought by Plaintiff under the Lanham Act, 15 U.S.C. § 1125(a), and the common and statutory law of the State of New Jersey, due to Defendants’ intentional unfair competition with Plaintiff and infringement of Plaintiff’s trademark and goodwill in connection with its infringing game which has irreparably damaged (and continues to irreparably damage) Plaintiff and its business.

Plaintiff and Defendants produce and market competing, yet very similar, board games in which participants use cheek retractors while stating words and phrases which their teammates attempt to understand and identify. Plaintiff, through its majority owner and CEO Joe Caiola, is the innovator and creator of the Watch Yo Mouth™ board game (the “WYOM Game”) in which participants use cheek retractors while stating words and phrases which their teammates attempt to understand and identify. Plaintiff sells the WYOM Game nationally and internationally under the trademark “Watch Yo Mouth” (the “Trademark”), which was assigned to it by Joe Caiola. Plaintiff, directly and through Mr. Caiola prior to assignment, has marketed in interstate commerce and sold the WYOM Game using the Trademark since at least May 12, 2016. The Trademark has been used in commerce continuously to identify and promote the WYOM Game. The Trademark is used in text format as well as embodied in a logo that prominently features a cheek retractor as follows:



Defendants produce a copycat board game (the “Infringing Game”) using the infringing “mark” “Watch Ya Mouth” (the “Infringing Mark”). Defendants sell the Infringing Game through eCommerce channels (including, but not limited to, through the domain www.wyamgame.com (the “Infringing Website”) and brick and mortar retailers. The Infringing Mark also uses cheek retractors and also requires players to state words and phrases which their teammates attempt to understand and identify. Defendants have imitated Plaintiff at every turn and have improperly traded on Plaintiff’s goodwill, unfairly competed with Plaintiff, and infringed upon the Trademark to Defendants’ benefit and Plaintiff’s detriment. The Infringing Mark is embodied in a logo also prominently featuring a cheek retractor as follows:



As stated in the accompanying Verified Complaint, though Plaintiff produced the first such board game and used its mark first in commerce, since Defendants’ inception, Defendants have unfairly competed with Plaintiff through misappropriation of Plaintiff’s Trademark and Defendant’s wrongful use of the Plaintiff’s Trademark in its business through, among other

avenues, the Infringing Game, the Infringing Mark and the Infringing Website (as stated in detail in the accompanying Verified Complaint). In doing so, Defendant has intentionally caused significant confusion in the marketplace (both on the consumer and retail levels) resulting in lost revenue, lost profits and loss of goodwill of Plaintiff. Recently, this confusion has escalated to the point of threats of legal action against Plaintiff by consumers of Defendant's inferior Infringing Game.

Accordingly, as Plaintiff has (and continues to) suffer irreparable harm, can amply demonstrate a likelihood of success on the merits on its Federal and State law unfair competition claims (some of which specifically provide for injunctive remedies), and the balance of harms and public interest tilt in its favor, Plaintiff is entitled to a Preliminary Injunction prohibiting Defendant from continuing to engage in the unfair competition and infringement.

STATEMENT OF FACTS

Though Plaintiff expressly relies upon and incorporates by reference the facts set forth in the accompanying Verified Complaint, for the Court's convenience, the facts are recited herein.

Background Of WYOM

1. WYOM in the brainchild of its CEO Joe Caiola. Mr. Caiola is a lifelong entrepreneur, creating his first venture (an eCommerce platform dedicated to the sale of auto parts) at age 17. See Verified Complaint dated January 31, 2017 at ¶6.

2. Later, Mr. Caiola attended and graduated from Rutgers University. While a student at Rutgers, he formed two more businesses: (1) urboox™ – a textbook marketplace and (2) SyllabusGenie™ - an application that assisted college students with course management. Id. at ¶7.

3. After graduating from Rutgers with a degree in Communications, Entrepreneurship, and Psychology, Mr. Caiola continued his entrepreneurial endeavors while also working full-time as a senior account executive with a marketing firm. This passion resulted in the inspiration for the WYOM Game in 2016. *Id.* at ¶8.

4. First inspired by a Hollywood film and, later, by a YouTube video featuring people playing around with cheek retractors, in May 2016, Mr. Caiola tried unsuccessfully to locate and quickly obtain the cheek retractors. Mr. Caiola also determined that there was no commercially available board game which used the cheek retractors in humorous word/game play. It was in that eureka moment that the WYOM Game was born. *Id.* at ¶9.

5. Setting the wheels in motion, Mr. Caiola immediately took the following actions to commercialize the WYOM Game and secure rights to the Trademark:

- On May 12, 2016, he purchased the domain www.watchyomouth.com (the “Website”).
- On May 12, 2016, he built and launched the Website, which included a sales portal which accepted all major credit cards.
- On May 12, 2016, he began a global advertising campaign through Facebook advertising the WYOM Game and directing traffic to the aforementioned Website to secure pre-preproduction sales of same.
- On May 13, 2016, the first orders for the WYOM Game were placed through the Website – 32 units resulting in purchase orders of over \$1,000. Notably, the first sale was from a customer in Australia.
- Between May 13 and May 16, 2016, Mr. Caiola ordered the necessary pieces to produce the game as well as engaged in customer support regarding the purchases through the Website.
- On May 19, 2016, Mr. Caiola formed the entity Plaintiff Watch Yo Mouth, LLC.
- Effective May 19, 2016, Mr. Caiola assigned and transferred all rights, title and interest to the Trademark and the goodwill associated therewith (including, but not limited to, that outlined in this Verified Complaint) to Plaintiff Watch Yo Mouth, LLC.

- Advertising and production continued and by May 23, 2016, the Website was receiving 90,000+ impressions from Facebook. The foregoing marketing resulted in total sales of \$12,656 through May 23, 2016. Id. at ¶10.

6. The global reach and market penetration of the WYOM Game using the Trademark was immediately apparent. As of May 23, 2016:

- WYOM received orders from 44 out of the 50 states in the USA through the Website and otherwise.
- WYOM received orders from 2 regions of Australia through the Website and otherwise.
- WYOM received orders from 5 regions of Canada through the Website and otherwise.
- WYOM received orders from Iceland & Norway through the Website and otherwise. Id. at ¶11.

7. As of May 25, 2016, Plaintiff shipped the first allotment of WYOM Games. In order to produce and ship the same, Plaintiff ordered custom game boxes, custom game cards, custom instruction sheets, sand timers, and mouth pieces - all of which were tailored to the WYOM Game and many of which are embossed with the Trademark. Id. at ¶12.

8. Both prior to and since the first shipment of the WYOM Game at the end of May 2016, Plaintiff has expended significant sums totaling more than \$45,000 to acquire, identify and promote its Trademark in commerce – including through global advertising through Facebook and Google. Id. at ¶13.

9. As a result of the foregoing, the Trademark is highly associated with Plaintiff, the WYOM Game and the Website. Id. at ¶14.

10. As a result of the foregoing, the Trademark and Plaintiff have achieved significant acknowledgment as originator of the cheek retractor board game concept and properly advertised itself as such. Id. at ¶15.

11. As evidence of the strong association between Plaintiff, the WYOM Game and the Trademark, Plaintiff has been recognized as the originator of the concept in a variety of media and television publications including but not limited to:

- Appearances on Fox's Good Day and Princeton TV television shows.
- Write ups in Asbury Park Press, The Art of the CEO, Courier News. *Id.* at ¶16, **Exhibit A.**

Defendants Improperly Games The System And Infringe The Trademark

12. Without permission, but with explicit knowledge of the Trademark (due to notice provided by Plaintiff, Mr. Caiola and otherwise), Defendants market, promote and distribute the Infringing Game and operates the Infringing Website. The Infringing Game and the Infringing Website both target a national audience using the Trademark of Plaintiff. *Id.* at ¶17.

13. As set forth herein, Defendants and the Infringing Website constantly and consistently engage in mimicking and copying the WYOM Game, the Trademark and efforts to trade off of Plaintiff's marketing and goodwill. For example, the WYOM is marketed as the "original" game in this space – as indicated on much of its packaging and the Website. Being aware of this marketing, Defendants also use the word "original" to market themselves online to assure top search results when someone searches for "Watch Yo Mouth" on Google, the text of the search results includes results showing the Infringing Game, which is listed as the "original." Yet, when the Infringing Website itself is viewed, the term "original" does not appear (as it would be false), and instead, the term "authentic" is used to describe the Infringing Game. The foregoing sleight of hand is accomplished by Defendant by having the term "original" imbedded into its Infringing Website (typically by using a SEO (Search Engine Optimization) company) in a manner which cannot be viewed by the consumer except in connection with search results, and in a manner which would also drive traffic to the Infringing Website in the event anyone searched for the

“original” game. That is, Defendants are using technology to blatantly trade off of Plaintiff’s goodwill. Id. at ¶18, **Exhibit B.**

14. Upon information and belief, after seeing advertising for the WYOM Game, Defendants attempted to crowd fund the Infringing Game through a Kickstarter campaign beginning on May 24, 2016 – weeks after Plaintiff had begun advertising and marketing the WYOM Game, and indeed, after Plaintiff had sold many copies of the WYOM Game under the Trademark. Id. at ¶19, **Exhibit C.**

15. Upon information and belief, as further evidence that Defendants were inspired to create the Infringing Game, Infringing Mark, and Infringing Website after seeing the WYOM Game and Trademark, Defendants have told a number of inconsistent background stories as to the purported origins of the Infringing Game. On Defendants’ Kickstarter campaign (intended to raise funds to develop the Infringing Game), Defendants claimed that the origin of the Infringing Game occurred when the founder was “watching a family member get her teeth whitened.” Later, in a January 18, 2017 news article, Defendants stated that the Infringing Game was inspired by a scene in the movie “The Boss.” Id. at ¶20, **Exhibit D.**

**Similarities Between The Infringing Game/Infringing Mark
And The WYOM Game/Trademark**

16. The following are examples of similarities between the Infringing Game/Infringing Mark and the WYOM Game/Trademark – all the result of Defendants’ intentional acts at trading off of Plaintiff’s goodwill and marketing success – which deliberately cause consumer confusion, mislead and deceive the consuming public, trade off of Plaintiff’s goodwill in the Trademark, and cause damages to Plaintiff and its business under the Trademark:

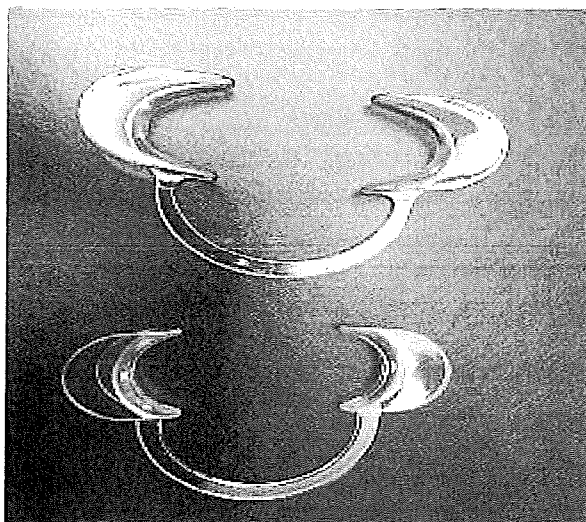
a. The Infringing Website target the exact same audience – the board game playing public.

b. The Infringing Game, Infringing Mark and Infringing Website are extremely similar in sound to the WYOM Game/Trademark. Indeed, the only difference is the Defendants' substitution of the letter "a" for the letter "o" in the second word: "Watch Yo Mouth" (the Trademark) versus "Watch Ya Mouth" (the Infringing Mark).

c. The look and appearance of the Trademark and Website and Defendants' use of the same (including through focus on a cheek retractor in Defendants' logo just as used in Plaintiff's logo).

d. Defendants have copied Plaintiff's game card themes by also releasing a family friendly and an adult/NSFW version. Id. at ¶21, **Exhibit E**.

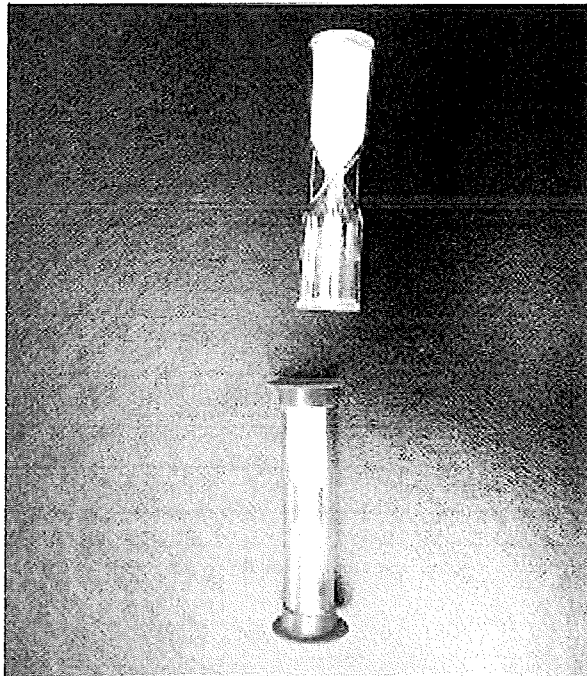
e. Defendants' mouthpiece (bottom image) is nearly indistinguishable from Plaintiff's mouthpiece (top image). Defendants simply changed the color, and appear to use cheaper materials which are indistinguishable to the eye.



f. All of Defendants' game cards include the name and logo for "Watch Ya Mouth," just as Plaintiff's game cards all include the Trademark and "Watch Yo Mouth" name and logo (which logo was copied by Defendants).



g. Defendants (bottom image) copied Plaintiff (top image) in also using a sand timer to limit the amount of time players have to say and guess the phrases.



h. Both the WYOM Game and the Infringing Game are sold at similar, relatively inexpensive price points: roughly \$10.00 (expansion packs) to roughly \$25.00 (full games).

i. Defendants misappropriated the general “themes” contained in Plaintiff’s marketing to heighten customer confusion including through the January 24, 2017 Facebook posting of a picture with a cat and the Infringing Game after Plaintiff had posted a similar picture on December 14, 2016. Id.





Plaintiff Learns Of And Immediately Objects To Defendants' Infringement And Unfair Competition

17. Upon learning the existence of Defendants and their infringement of the Trademark, in late May/early June 2016, Plaintiff (though Mr. Caiola) reached out to Defendant Peter Denbigh and objected to the infringement and demanded that Defendants cease and desist. Plaintiff, through counsel, also considered whether a practical resolution could be reached in lieu of litigation. *Id.* at ¶22.

18. At no time during these discussions or otherwise were Defendants granted any right or license to use the Trademark, to trade off of the WYOM Game and the Trademark, or to copy and incorporate Plaintiff's intellectual property into Defendants' product. *Id.* at ¶23.

19. It appears that Defendants used these discussions to stall for time, during which Defendants could continue infringe the Trademark and obtain a free ride on Plaintiff's advertising and efforts, as well as the goodwill of Plaintiff and the Trademark. *Id.* at ¶24.

Proceedings Before The U.S. Patent And Trademark Office

20. Taking its misappropriation a step further, Defendant Peter Denbigh filed an application with the U.S. Patent and Trademark Office (“USPTO”) to register the Infringing Mark on May 20, 2016. Id. at ¶25, Exhibit F.

21. Defendants’ trademark registration application with the USPTO was without merit, misleading, and contained knowingly false information. Id. at ¶26.

22. Defendants’ application for trademark registration was filed as “intent to use.” Thus, Defendants were acknowledging under oath that as of May 20, 2016, Defendants were not even using the Infringing Mark in commerce. Id. at ¶27.

23. As of the time Defendants submitted their application to register the Infringing Mark, Defendants were explicitly aware of the existence of the Trademark, and that Defendants’ Infringing Mark copied and infringed upon the Trademark, and that the use of the Trademark in commerce pre-existed not only Defendants’ intent to use the Infringing Mark, but the actual use of the Infringing Mark in commerce. Id. at ¶28.

24. Plaintiff has obtained an extension of time to oppose Defendants’ trademark registration application with the USPTO. Pursuant to this extension, Plaintiff has until February 8, 2017, to oppose Defendants’ application. Plaintiff intends on opposing Defendants’ application and seeking a stay of the USPTO’s consideration of Defendants’ application until such time as this Court rules on the issue. Id. at ¶29.

Defendants' Actions Caused (And Continue To Cause)
Actual Confusion In The Marketplace

25. Defendants' use of the Infringing Game, Infringing Mark and Infringing Website has resulted in, and will continue to result in, significant consumer confusion amongst the consuming public as to the source of goods and services being offered, and has tarnished Plaintiff's business, reputation and the goodwill established in the Trademark. Id. at ¶30.

26. Specifically, both before and after the Infringing Game was first shipped, Defendants have, without permission, copied Plaintiff's tone, efforts, trade dress, appearance and content in trying to intentionally confuse the consuming public about the origin of the Infringing Game – a goal of which Defendants have unfortunately succeeded. Id. at ¶31.

27. By way of example, as recently as January 17, 2017, Defendants have misappropriated Plaintiff's content on its Website including but not limited to copy, tone and themes used by Plaintiff in an effort to convince the consuming public that WYAM and the Infringing Game and Infringing Website are from the same commercial source. Id. at ¶32, **Exhibit G.**

28. As further example of Defendants' improper exploitation and trade on the good will, trade dress and image of Plaintiff including the Trademark, in or about July 2016, Defendants shared a video on Twitter wherein they advertised to the public that individuals were playing the Infringing Game when in fact they were playing Plaintiff's WYOM Game – explicitly and intentionally confusing the public to trade on the back of Plaintiff without permission or authority. At the time the video was posted, Defendants had not shipped any units of the Infringing Game. Id. at ¶33, **Exhibit H.**

29. When Plaintiff – through Mr. Caiola – advised Defendants of this infringement, the video was taken down – an admission that they were damaging Plaintiff. In addition to copyright

infringement, this additional action is further indisputable evidence of Defendants' effort to improperly trade on the goodwill and temporal and financial investments made by Plaintiff in its brand and business including but not limited to the Trademark. *Id.* at ¶34.

30. There is even a spoof/fraudulent website – www.watchyomouthshop.com – that siphons web traffic from the Website and directs customers to the Twitter and Facebook pages for WYAM – further confusing the public and causing damage to Plaintiff. *Id.* at ¶35, **Exhibit I**.

31. The most shocking example of confusion in the marketplace flows from the fact that a consumer of Defendants' inferior Infringing Game was injured by same and has reached out to WYOM threatening legal action as a result of the alleged injuries. The consumer provided proof that they purchased the Infringing Game – **NOT THE WYOM GAME** – but the damage to Plaintiff in the marketplace is ongoing and material. *Id.* at ¶35, **Exhibit J**.

32. Further examples of consumer and retailer confusion have occurred as follows (through January 15, 2017):

- Defendants' customers emailing Plaintiff for support: **53**
- Defendants' customers emailing Plaintiff relative to defects with the Infringing Game: **12**
- Defendants' customers playing the Infringing Game, but hashtagging/tagging the WYOM Game or WYOM in photos: **45**
- News Outlets contacting Plaintiff mistakenly thinking they produce the Infringing Game: **2**
- Retailers contacting Plaintiff mistakenly thinking they produce the Infringing Game: **2**

The Retailer confusion is particularly noteworthy as not only are they sophisticated, but one retailer was mistaken even after exchanging Purchase Orders and Invoices with Plaintiff. *Id.* at ¶36.

Plaintiff Has Made Significant Investments In The Trademark And Goodwill

33. Since inception, Plaintiff has made significant temporal and financial investments in growing the business and the Trademark. Additionally, Mr. Caiola resigned from his full time job to direct all resources and effort to WYOM. Id. at ¶37.

34. From inception to present, Plaintiff has employed as many as nine (9) employees whose employment depends on the protection of the Trademark and Plaintiff's brand. Id. at ¶38.

35. From May 2016 to date, Plaintiff has invested approximately \$45,000 in global marketing campaigns through Google; Facebook; Instagram; Amazon Marketing; PR Agencies; viral marketing campaigns; and through travel to trade and game shows throughout the nation. Id. at ¶39.

36. These efforts have resulted in sales to date of approximately \$1.3 million which is comprised of approximately 50,000 units of the WYOM Game. Of note, the WYOM Game was the #1 product in over 100 Showcase stores in Canada during Christmas 2016. Id. at ¶40.

37. Defendants' use of the Infringing Mark, Infringing Website, and Infringing Game (which, per customer complaints to Plaintiff, is an inferior product that is often littered with misspellings and duplicate cards) constitutes an infringement upon Plaintiff's Trademark and rights therein (including goodwill) and Defendants' attempt to profit from the unauthorized use of Plaintiff's Trademark and the rights therein is a direct violation of United States Trademark Law and State Common Law, including unfair competition. Id. at ¶41.

38. Defendants' continued use of the Infringing Game, Infringing Mark and Infringing Website has damaged Plaintiff's interest in the Trademark, and will continue to do so, by, among other things:

A. Continuing to cause consumer confusion as to the source of the products provided under the Trademark;

B. Continuing to cause retailer confusion as to the source of the products provided under the Trademark;

C. Continuing to damage the valuable and significant goodwill that Plaintiff has established in its Trademark;

D. Continuing to unfairly compete with Plaintiff's business by engaging in all of the foregoing activities as set forth herein; and

E. Threatening to further trade upon the Trademark and Plaintiff's goodwill, thereby causing further damage to the valuable and significant goodwill Plaintiff has in the Trademark and its business. Id. at ¶42.

39. The wrongful activities of Defendants are causing and will continue to cause severe and irrevocable injury to Plaintiff, including but not limited to, Plaintiff's rights in and to its Trademark and business. Id. at ¶43.

40. Defendants continue to use the infringing and confusingly similar Infringing Mark in connection with the Infringing Game and the Infringing Website and, as stated at length above, that usage is causing actual and likely confusion amongst the consuming public and retailers. Id. at ¶44.

41. The use by Defendants of Plaintiff's Trademark has been willful and deliberate, designed specifically to improperly trade upon the goodwill associated with Plaintiff's name and the Trademark. Id. at ¶45.

42. Plaintiff's goodwill is of enormous value and Plaintiff will suffer irreparable harm, should this use and infringement be allowed to continue to the detriment of Plaintiff's reputation and goodwill. Id. at ¶46.

43. Given past efforts, Defendants' unfair competition and use of the Trademark will continue unless enjoined by this Court. Id. at ¶47.

LEGAL ARGUMENT

1. PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION

Federal Rule of Civil Procedure 65 governs the entry of a preliminary injunction. The grant or denial of a preliminary injunction "is within the discretion of the Court." American Exp. Travel Related Services, Inc. v. Sidamon-Eristoff, 669 F.3d 359, 366 (3d Cir. 2012); Northeastern Lumber Mfrs. Ass'n v. Sky of N.Y. Corp., 2016 U.S. Dist. LEXIS 179951, *5 (D.N.J. Dec. 29, 2016). "A party seeking a preliminary injunction must show: (1) a likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief." Kos Pharms., Inc. v. Andrx Corp., 369 F.3d 700, 708 (3d Cir. 2004); BP Chems. Ltd. v. Formosa Chem. & Fibre Corp., 229 F.3d 254, 263 (3d Cir. 2000). The moving party has the burden to establish the first two elements in support for its request for injunctive relief. See Acierno v. New Castle Cnty, 40 F.3d 645, 653 (3d Cir. 1994). The district court "should take into account, when they are relevant" the latter two elements. Id.

In light of Defendants' blatant unfair competition and misappropriation of Plaintiff's Trademark and Defendants' wrongful use of the Plaintiff's Trademark in business through, among other avenues, the Infringing Game, the Infringing Mark and the Infringing Website, Defendants have caused significant confusion in the marketplace (both on the consumer and retail levels)

resulting in lost revenue, lost profits and loss of goodwill of Plaintiff. Recently, this confusion has escalated to the point of threats of legal action against Plaintiff by consumers of Defendant's inferior Infringing Game. Accordingly, Plaintiff is entitled to a Preliminary Injunction prohibiting Defendant from continuing to engage in this infringement and unfair competition.

A. **Plaintiff Has Shown A Likelihood Of Success On The Merits**

The facts of this case, as set forth in the accompanying Verified Complaint, demonstrate that Plaintiff will succeed on the merits of its claims. In evaluating a likelihood of success, “[i]t is not necessary that the moving party’s right to a final decision after trial be wholly without doubt; rather, the burden is on the party seeking relief to make [only] **a prima facie case showing** a reasonable probability that it will prevail on the merits.” MNI Mgmt., Inc. v. Wine King, LLC, 542 F. Supp. 2d 389, 403 (D.N.J. 2008) (citing Oburn v. Shapp, 521 F.2d 142, 148 (3d Cir. 1975)) (emphasis added).

1. **Plaintiff Has Demonstrated A Likelihood Of Success Of Unfair Competition Under Section 1125(A) Of The Lanham Act**

Though the Trademark is unregistered¹, Plaintiff possesses a reasonable likelihood of success on the merits of its claim for Unfair Competition under Section 1125(a) of the Lanham Act. Particularly, an infringer like Defendants are liable as follows:

Any person who, on or in connection with any goods or services, . . .
. . . uses in commerce any word, term, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which-

¹ As noted above, Plaintiff has obtained an extension of time to oppose Defendants' baseless “intent to use” trademark registration application with the USPTO. Pursuant to this extension, Plaintiff has until February 8, 2017, to oppose Defendants' application.

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person

* * * * *

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

15 U.S.C. § 1125(a)(1).

The “Lanham Act protects unregistered marks to the same extent as registered marks because trademark rights emanate from use and not merely registration.” Duffy v. Charles Schwab & Co., Inc., 97 F. Supp. 2d 592, 598 (D.N.J. 2000). Here, there is no dispute concerning the existence and date of first use of Plaintiff’s Trademark, nor that the Infringing Mark copies, infringes, and is blatantly confusingly similar to Plaintiff’s Trademark.

To prevail on an unfair competition claim (and, for that matter a trademark infringement claim) under the Lanham Act, the plaintiff must show that (1) the mark is valid and legally protectable, (2) the plaintiff owns the mark, and (3) the defendant’s use of a similar mark is likely to create confusion concerning the origin of the plaintiff’s goods or services. See Kos Pharms., 369 F.3d at 709; Freedom Card, Inc. v. J.P. Morgan Chase & Co., 432 F.3d 463, 470 (3d Cir. 2005); Fisons Horticulture, Inc. v. Vigoro Indus., Inc., 30 F.3d 466, 472 (3d Cir. 1994). Plaintiff has a demonstrable likelihood of success in satisfying these factors.

a. The Trademark is Valid and Legally Protectable

The WYOM Trademark easily meets all prongs necessary to succeed on its claims under the Lanham Act. “[A]n unregistered mark is only valid and legally protectable if the plaintiff shows that the mark is inherently distinctive or has secondary meaning.” Duffy, 97 F. Supp. 2d at 598. Distinctiveness of a mark is measured by classifying the mark into one of four categories

ranging from strongest to weakest, with strong marks receiving the greatest protection: “(1) arbitrary or fanciful (such as ‘KODAK’); (2) suggestive (such as ‘COPPERTONE’); (3) descriptive (such as ‘SECURITY CENTER’); and (4) generic (such as ‘DIET CHOCOLATE FUDGE SODA’).” Freedom Card, Inc., 432 F.3d at 473. Putting on a finer point:

Arbitrary or fanciful marks neither describe nor suggest anything about the product. Checkpoint Sys., Inc. v. Check-point Software Techs., Inc., 269 F.3d 270, 282 (3d Cir. 2001). Suggestive marks suggest an idea of the qualities and characteristics of the goods, but require customer imagination, thought or perception to determine what the product is. Descriptive marks describe the intended purpose, function, use, size, or class of users of the goods, and convey an immediate idea of the qualities or characteristics of the goods. Generic marks function as the common descriptive name of a product class.

The first two categories are deemed ‘inherently distinctive’, and thus, are entitled to the highest level of protection, at least in those geographic and product areas in which the senior user applies the mark to the goods.

MNI Mgmt., Inc., 542 F. Supp. 2d at 405 (citations omitted).

Here, it is clear that the Trademark in question is clearly suggestive. “If the mental leap between the word and the product’s [or service’s] attributes is not almost instantaneous, this strongly indicates suggestiveness...” Vista India v. Raaga, LLC, 501 F.Supp.2d 605, 617 (D.N.J. 2007). Here, the term “Watch Yo Mouth” requires imagination, thought and perception of the consumer to make the link to the game itself. Surely a player’s mouth looks funny while playing the game – thus the logo and image itself associated with the Trademark. However, watching a player’s mouth is not descriptive of the product (i.e., the game). On the other hand, the Trademark is not generic, as there is no generic term for the game at issue. The Trademark is also not descriptive because it does not provide an immediate idea of the qualities or characteristics of the game at issue. Indeed, the game itself does not even require the player to look at anyone’s mouth.

It is not a lip-reading game. It is a sound-based game (i.e., the player has to determine what his/her teammate is saying). Thus, the term “Watch Yo Mouth” does not describe how to play the game, nor what the game is about.

Further support for the suggestive nature of the Trademark is found in Defendants’ own trademark application with the USPTO. Defendants are seeking registration (thus far unsuccessfully) of the WYAM Infringing Mark for a nearly identical game and under a nearly identical mark – thus acknowledging that the Trademark could not be generic or descriptive (neither of which are claimed by Defendants in their registration application). See generally Colonial Elec. & Plumbing Supply of Hammonton, LLC v. Colonial Elec. Supply, Ltd., 2007 U.S. Dist. LEXIS 94417, *12 (D.N.J. Dec. 27, 2007)(The fact that defendants sought trademark protection for an identical mark ‘inherently acknowledges’ that defendants also believe that the Trademark is valid and protectable.)

Based upon the foregoing, it is clear that the Trademark is a valid and legally protectable mark.

b. Plaintiff Owns The Trademark

The second consideration in assessing the likelihood of success on an Unfair Competition Claim under the Lanham Act is the question of ownership of the mark. Again, as supported by the Verified Complaint submitted herewith, there is no dispute that Plaintiff is proper owner of the Trademark.

c. **Defendant's Use Of A Confusingly Similar Mark Has Caused Actual Confusion, And Is Likely To Cause More Confusion, Amongst the Consuming Public Concerning The Origin Of Plaintiff's Goods**

As with the factors above, Plaintiff's claims also easily satisfy the likelihood of confusion test. Specifically, Plaintiff has experienced several instances of actual consumer confusion, including a threat of legal action for personal injury caused by Defendants' product. Of course, whether through a Google search or a simple review of the Trademark and the Infringing Mark, it is also abundantly clear that there is a likelihood of consumer confusion between the Trademark and the Infringing Mark.

"A likelihood of confusion exists when consumers viewing the mark would probably assume that the product or service it represents is associated with the source of a different product or service identified by a similar mark... A direct confusion claim arises when 'a junior user of a mark attempts to free-ride on the reputation and goodwill of the senior user by adopting a similar or identical mark.'" MNI Mgmt., Inc., 542 F. Supp. 2d at 408; Dranoff-Perlstein Assocs. v. Sklar, 967 F.2d 852, 862 (3d Cir. 1992). In determining whether a likelihood of confusion exists, the courts will consider the following:

1. the similarity between plaintiff's and defendant's marks;
2. the strength of the plaintiff's mark;
3. the price of the goods and other factors indicative of the care and attention expected of consumers when making a purchase;
4. the length of time the defendant has used the mark without actual confusion;
5. the intent of the defendant in adopting the mark;
6. the evidence of actual confusion;

7. whether the goods, though not competing, are marketed in the same channels of trade;
8. the extent to which the targets of the parties' sales efforts are the same;
9. the relationship of the goods in the minds of consumers; and
10. other facts suggesting that the consuming public might expect the prior owner to manufacture a product in the defendant's market.

Interpace Corp. v. Lapp, Inc., 721 F.2d 460, 463 (3d Cir. 1983).

None of the Lapp factors is determinative in the likelihood of confusion analysis and each factor must be weighed and balanced one against the other. See Checkpoint Sys., Inc. v. Check Point Software Techs., Inc., 269 F.3d 270, 280 (3d Cir. 2001). Each factor is "weighed... separately," which "is not to say that all factors must be given equal weight." Fisons Horticulture, Inc., 30 F.3d at 476 & n.11. The different factors may properly be accorded different weights depending on the particular factual setting and the district court should only address the factors that seem appropriate to a given situation. See Kos Pharms., 369 F.3d at 709 (*quoting A & H Sportswear, Inc. v. Victoria's Secret Stores, Inc.*, 237 F.3d 198, 215 (3d Cir. 2000)). The Lapp factors are best understood as "tools to guide a qualitative decision." A & H, 237 F.3d at 216. An analysis of the applicable factors compels a finding in favor of Plaintiff and a finding that there is a likelihood of consumer confusion in the marketplace.

i. **The Trademark and Infringing Mark are essentially identical**

The first Lapp factor examines the similarity between the Trademark and the Infringing Mark. Here, the Trademark and WYAM Infringing Mark differ by only one letter and are otherwise identical. When comparing two marks, each must be viewed in its entirety, although "one feature of a mark may be more significant than other features, and it is proper to give greater force and effect to that dominant feature." Giant Food, Inc. v. Nation's Foodservice, Inc., 710

F.2d 1565, 1570 (Fed. Cir. 1983). In assessing similarity between marks, “the court must compare the appearance, sound, and meaning of the marks, as well as the manner in which they are used.” See Harlem Wizards Entertainment Basketball v. NBA Properties, 952 F. Supp. 1084, 1096 (D.N.J. 1997). Courts have repeatedly held that the similarity between the marks is the most important factor when products, such as those at issue here, directly compete. See McNeil Nutritionals LLC v. Heartland Sweeteners LLC, 511 F.3d 350, 359 (3d Cir. 2007); A & H, 237 F.3d at 216. Marks are confusingly similar if ordinary consumers would likely conclude that the products or services share a common source, affiliation, connection or sponsorship. See Trade Media Holdings Ltd. v. Huang & Assocs., 123 F. Supp. 2d 233, 240 (D.N.J. 2000); Fisons, 30 F.3d at 477.

As explained in greater detail above, both marks are identical but for Defendants changing the letter “o” for the letter “a” in the Infringing Mark (“Watch Yo Mouth” versus “Watch Ya Mouth”). It is difficult to have more similarity between the Trademark and the Infringing Mark. Accordingly, this factor weighs heavily in favor of Plaintiff and in favor of a finding of likelihood of confusion.

ii. **The Trademark is strong and distinctive**

The second Lapp factor examines the strength of Plaintiff’s Trademark. “Under the Lanham Act, stronger marks receive greater protection because they carry greater recognition, so that a similar mark is more likely to cause confusion.” Kos Pharms., 369 F.3d at 715 (internal citations and quotations omitted). “Distinctiveness on the scale of trademarks is one measure of a mark’s strength [while] [c]ommercial strength, or marketplace recognition of the mark, is another.” Fisons, 30 F.3d at 479 (internal citations omitted). “The first prong of this test looks to

the inherent features of the mark; the second looks to factual evidence of ‘marketplace recognition.’” A & H, 237 F.3d at 221 (citing Fisons, 30 F.3d at 479).

As explained above, it is clear that the Trademark is suggestive. The evidence as set forth in the Verified Complaint also makes clear that Plaintiff has spent significant funds advertising the WYOM Game and the Trademark both nationally and internationally, and that same has resulted in significant sales. Further, the very fact that Defendants chose to imitate and infringe upon the Trademark to hijack Plaintiff’s goodwill in the Trademark also reveals the strength of the Trademark. That is, if the Trademark was not strong in the marketplace, why would Defendant chose a nearly identical suggestive mark for its own competing product?

Based upon the foregoing, this factor weighs in favor of Plaintiff and in favor of a finding of likelihood of confusion.

iii. **The Price Of The Goods At Issue Is Indicative Of A Low Level Of Care And Protection Of The Consuming Public**

The third Lapp factor requires an examination of the price of the goods and other factors indicative of the care and attention expected of consumers when making a purchase.” Interpace, 721 F.2d at 463. The following non-exhaustive considerations guide a court’s determination of the standard of consumer care for a particular product:

Inexpensive goods require consumers to exercise less care in their selection than expensive ones. The more important the use of a product, the more care that must be exercised in its selection. In addition, the degree of caution used depends on the relevant buying class. That is, some buyer classes, for example, professional buyers will be held to a higher standard of care than others. Where the buyer class consists of both professional buyers and consumers, the standard of care to be exercised by the reasonably prudent purchaser will be equal to that of the least sophisticated consumer in the class.

McNeil Nutritionals, LLC, 511 F.3d at 363-64 (internal quotations and citations omitted).

Here, the purchase of the parties' products does not require sophistication and, as stated in the Verified Complaint, both parties' games are relatively inexpensive and are comparable in price. Given that the purchase of either the WYOM Game or the Infringing Game involves little care, research or consideration, there is a strong likelihood of confusion between the products and this factor weighs in favor of Plaintiff and in favor of a finding of likelihood of confusion.

iv. Upon Defendants' Entry Into The Market, Confusion Was Immediate And There In Myriad Evidence Of Actual Confusion In The Marketplace

The fourth and sixth Lapp factors require examination of the length of time defendant has used the mark without actual confusion, or as further explained as requiring the Court to:

determine the length of time, if any, the mark has been used without actual confusion, and whether the party claiming trademark infringement can provide evidence that consumers are actually confused by the marks at issue. These factors are necessarily interrelated, and the Court will examine them together.

Any evidence of actual confusion between the parties is significant to this analysis and is *highly probative of likelihood of confusion*, but such evidence is neither necessary nor determinative to find likelihood of confusion, given the potential difficulties of collecting evidence of actual confusion. Sabinsa Corp. v. Creative Compounds, LLC, 609 F.3d 175, 187 (3d Cir. 2010). The most relevant evidence of actual confusion is the testimony of a reasonably prudent purchaser who was in fact confused by defendant's trademark.

Koninklijke Philips Elecs. N.V. v. Hunt Control Sys., 2016 U.S. Dist. LEXIS 84299, *57-58 (D.N.J. June 29, 2016) (citations omitted) (emphasis added).

Here, the actual confusion between the parties' products was almost instantaneous. Within weeks of the Defendants releasing their product, Plaintiff began receiving inquiries from consumers that evidenced actual confusion between the products. This confusion extended not

just to consumers but to advertisers/search engines and retailers as well. As stated at length in the Verified Complaint, there is overwhelming evidence of actual confusion in the national marketplace between the Trademark and the Infringing Mark. This actual confusion has gone so far that a customer of Defendants even asserted a possible personal injury claim against Plaintiff due to the victim's father's confusion between the WYOM Game under its Trademark and the Defendants' imitation Infringing Game marketed under the Infringing Mark.

Based upon the foregoing, the extensive incidents of actual confusion, coupled with the immediacy of that confusion, weighs indisputably and heavily in favor of a finding of likelihood of confusion.

v. **Defendants Intentionally Misappropriated The Trademark And Trade Dress For Their Benefit**

The fifth Lapp factor requires examination of the intent of Defendants in adopting the Infringing Mark. Though a finding of intentional infringement is not necessary for a finding of likelihood of confusion, the presence of predatory intent weighs strongly in favor of a finding of likelihood of confusion. See National Football League Properties v. New York Giants, 637 F. Supp. 507, 518 (D.N.J. 1986). "Evidence of intentional, willful and admitted adoption of a mark closely similar to the existing mark weighs strongly in favor of finding a likelihood of confusion." Kos Pharms., 369 F.3d at 721.

Here, Defendants are intentionally and willfully:

- Unfairly competing and infringing the Trademark by adopting and using a nearly identical and confusing similar mark after being put on notice by Plaintiff;
- Attempting to register the competing Infringing Mark without legal basis;

- Advertising for the Infringing Game using the Infringing Mark by showing videos of customers playing Plaintiff's WYOM Game²;
- Misappropriating the look, feel and content contained on the Website to mimic Plaintiff's advertising and confuse consumers.

Given Defendants' indisputable efforts to intentionally infringe the Trademark and unfairly compete with and harm Plaintiff, this factor weighs heavily in favor of Plaintiff and in favor of a finding of likelihood of confusion.

vi. **The Respective Goods Are Competing And Marketing In The Same Ecommerce Channels.**

The seventh Lapp factor requires examination of whether or not there is overlap in the parties' channels of trade. Courts have recognized that "the greater the similarity in advertising and marketing campaigns, the greater the likelihood of confusion. Applying this factor, courts must examine the trade exhibitions, publications and other media the parties use in marketing their products as well as the manner in which the parties use their sales forces to sell their products to consumers." Checkpoint, 269 F.3d at 288-89. When parties target their sales efforts to the same consumers, there is a stronger likelihood of confusion. See 800-JR Cigar, Inc. v. GoTo.com, Inc., 437 F. Supp. 2d 273, 289 (D.N.J. 2006).

There is no dispute that Plaintiff and Defendants market and sell their competing products in identical channels of trade – namely, on their websites, online and through brick and mortar stores. Tellingly, even these retailers and consumers are confused about the source of Defendants' goods given Defendants' blatant infringement and unfair competition. Accordingly, this factor weighs heavily in favor of Plaintiff and in favor of a finding of likelihood of confusion.

² As shocking as it seems, Defendants' scheme at misappropriating Plaintiff's goodwill actual went as far as using video of Plaintiff's game being used as an example of Defendants' game.

vii. The Targets Of The Respective Sales Efforts Are The Same – Users Of Both Family And Adult Content Board Games

The eighth Lapp factor requires examination of the extent to which the targets of the parties' sales efforts are the same. When parties target their sales efforts to the same consumers, there is a stronger likelihood of confusion. See 800-JR Cigar, Inc., 437 F. Supp. 2d 273 at 289. As set forth herein, there is no dispute that Plaintiff and Defendants target the same individuals and entities as their games are nearly identical. Indeed, even within the game itself, Plaintiff and Defendants both offer family and adult versions – thus targeting the same exact segment of the board game purchasing consuming public. There is such a similarity in audience that a customer of Defendants has even asserted a possible personal injury claim against Plaintiff due to their confusion between the WYOM Game and Infringing Game. Accordingly, this factor weighs heavily in favor of Plaintiff and in favor of a finding of likelihood of confusion.

viii. Consumers Are Confused As To The Relationship Between WYOM And WYAM

The final applicable Lapp factor requires examination of the relationship of the goods in the minds of consumers. Under this prong, “courts examine whether buyers and users of each parties' goods are likely to encounter the goods of the other, creating an assumption of common source affiliation or sponsorship. The test is whether the goods are similar enough that a customer would assume they were offered by the same source.” Checkpoint, 269 F.3d at 286 (*citing Fisons*, 30 F.3d at 481)(“The question is whether the consumer might...reasonably conclude that one company would offer both of these related products.”).

As set forth above, Plaintiff and Defendants both sell their products online and both sell them in big box/brick and mortar stores. A simple online search (i.e., Google) for either product reveals results for the competing product. Additionally, the Plaintiff has received specific inquiries

from consumers and retailers regarding Defendants' product, which they mistakenly believed was Plaintiff's product and vice versa. Accordingly, this factor weighs heavily in favor of Plaintiff in favor of a finding of likelihood of confusion.

As all of the Lapp factors relevant to this dispute weigh heavily in favor of Plaintiff and in favor of a finding of likelihood of confusion, a Preliminary Injunction must be entered against Defendants.

2. **Plaintiff Has Demonstrated A Likelihood Of Success On Its Claims For Common Law And Statutory Unfair Completion Under New Jersey Law**

Given the detailed analysis of Plaintiff's likelihood of success on its claims under the Lanham Act, by extension, it will succeed on its claims under New Jersey statutory and common law relative to unfair competition as the elements (as are applicable) are essentially identical.

Under N.J.S.A. §56:4-1, a party:

violating any of the provisions of section 56:4-1 of this title [by appropriating for his or their own use a name, brand, trade-mark, reputation or goodwill of another] shall be liable, at the suit of the maker of such branded or trade-marked products, or any other injured person, to an injunction against such practices, and shall be liable in such suit for all damages, directly or indirectly caused, to the maker by such practices, which damages may be trebled in the discretion of the court.

New Jersey's "unfair competition provision is equivalent to the federal unfair competition provision contained in Section 43(a) of the Lanham Act." Exeltis USA Dermatology, Inc. v. Acella Pharms., LLC, 2016 U.S. Dist. LEXIS 105960, *13 (D.N.J. Aug. 11, 2016) (*quoting Mycone Dental Supply Co. v. Creative Nail Design, Inc.*, 2012 U.S. Dist. LEXIS 116924, at *7 (D.N.J. Aug. 17, 2012) ("The elements of unfair competition under N.J.S.A. § 56:4 and New Jersey common law are the same as those required under the Lanham Act."); *see also J & J Snack Foods Corp. v. Nestle USA, Inc.*, 149 F. Supp. 2d 136, 157 (D.N.J. 2001). As eloquently stated in 800-

JR Cigar, Inc., “there is a good reason for this: the Lanham Act is derived generally and purposefully from the common law tort of unfair competition, and its language parallels the protections afforded by state common law and statutory torts.” 437 F. Supp. 2d at 281 (citing Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc., 42 F.3d 1421, 1433 (3d Cir. 1994)).

Plaintiff has adequately demonstrated a substantial likelihood of success on its causes of action for common law and statutory unfair competition and common law trademark infringement under New Jersey law for the same reasons it has demonstrated a substantial likelihood of success on the merits of its claim under the Lanham Act.

3. **Plaintiff Has Demonstrated A Likelihood Of Success On Its Claims For Common Law And Statutory Unfair Trade Practice/Dilution Under New Jersey Law**

For the same reasons Plaintiff has demonstrated a substantial likelihood of success on its claims under the Lanham Act, it also has a substantial likelihood of success on its claims under New Jersey statutory and common law relative to dilution. The New Jersey Trade Names, Trademarks and Unfair Trade Practices Act, N.J.S.A. § 56:3-13.1, et seq. (“TCA”), parallels the Lanham Act, and provides in relevant part:

[W]ith respect to a mark registered pursuant to this act and a mark protected at common law, any person who engages in the conduct specified in paragraphs (1) and (2) of this subsection shall be liable in a civil action by the owner or the designee of the owner of the mark for any or all of the remedies provided in subsections d., e. and f. of this section, except that under paragraph (2) of this subsection, the owner or designee shall not be entitled to recover profits or damages unless the conduct has been committed with the intent to cause confusion or mistake or to deceive.

(1) The use, without consent of the owner or designee, of any reproduction, counterfeit, copy, or colorable imitation of a mark in connection with the sale, distribution, offering for sale, or advertising in this State of any goods or services on or in connection with which the use is likely to cause confusion or mistake or to deceive as to the source of origin of the goods or services; or

(2) The reproduction, counterfeiting, copying or colorable imitation of a mark and the application of a reproduction, counterfeit, copy or colorable imitation of a mark to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this State of the goods or services.

N.J.S.A. § 56:3-13.16(a)(1)-(2).

Courts in this Circuit have ruled that “similarities in the purpose, terminology, and remedies enumerated under the TCA and the Lanham Act affirms that federal law trademark law is persuasive authority for the interpretation and construction of the NJ TCA.” Silla Jewelry Co., Ltd. v. Sunico LLC, 2016 N.J. Super. Unpub. LEXIS 223, *12-13 (Law Div. Feb. 1, 2016) (*citing* Pharmacia Corp. v. Alcon Labs., Inc., 201 F. Supp. 2d 335, 371 (D.N.J. 2002)). Accordingly, the above analysis conducted under the Lanham Act equally demonstrates a substantial likelihood of success on the merits of Plaintiff’s New Jersey statutory and common law relative to unfair trade practices and dilution. *See e.g.,* Coach, Inc. v. Paula’s Store Sportwear LLC, 2014 U.S. Dist. LEXIS 12170, *8 (D.N.J. Jan. 31, 2014).

B. Plaintiff Will Suffer Irreparable Injury In The Absence Of Injunctive Relief

It is black letter law in this Circuit that “[g]rounds for irreparable injury include loss of control of reputation, loss of trade, and loss of good will.” Kos Pharms., 369 F.3d at 726 (*quoting* Pappan Enters., Inc. v. Hardee’s Food Sys., Inc., 143 F.3d 800, 805 (3d Cir. 1998)). “Lack of control over one’s mark ‘creates the potential for damage to . . . reputation [, which] constitutes irreparable injury for the purpose of granting a preliminary injunction in a trademark case.’” *Id.* (*quoting* Opticians Ass’n of Am. v. Indep. Opticians of Am., 920 F.2d 187, 196 (3d Cir. 1990)). Recently, courts in this District have confirmed that unauthorized use of a mark and unfair competition “will cause irreparable harm by damaging its reputation and causing a loss of goodwill.” Northeastern Lumber Mfrs. Ass’n, 2016 U.S. Dist. LEXIS 179951 at *6. Given the

litany of misconduct outlined in the Verified Complaint and herein, as well as the numerous and increasing incidents of actual consumer confusion³, it is clear that Plaintiff has suffered, is suffering and will continue to suffer significant damages to its reputation and goodwill and further irreparable harm.

Plaintiff will suffer significant damage to its reputation and goodwill, and to the integrity of its Trademark if Defendants are permitted to continue to wrongfully use the Infringing Mark to sell the Infringing Product. This injury to Plaintiff's reputation and goodwill cannot be compensated through monetary damages.

Based upon the foregoing, there can be little dispute that Plaintiff will continue to suffer irreparable injury in the event a Preliminary Injunction is not entered.

C. The Balance Of Hardships Favors The Requested Relief

The balance of hardship favors the requested injunctive relief. Defendants have no right to unfairly compete with Plaintiff or use the Plaintiff's Trademark, or any mark which is confusingly similar, or trade on Plaintiff's goodwill for any purpose. Therefore, while Plaintiff risks being sued by consumers injured using Defendants' product and having its goodwill and reputation irreparably harmed by Defendants' actions, Defendants have no legitimate interest in trading off of Plaintiff's Trademark and goodwill therein. Defendants were also almost immediately placed on notice of their infringement and yet have intentionally continued to harm Plaintiff in bad faith. There is thus no harm to Defendants' legitimate interest resulting from the requested injunction. "A trademark owner's lack of ability to control the quality and reputation of the products associated with his mark is potentially damaging. The [evidence provided by Plaintiff

³ As the competing products become more popular, logic suggests increasing incidents of actual confusion and violations of Plaintiff's trademark rights (and continuing damage to its reputation and goodwill).

of] confusion in the marketplace demonstrates the harm necessary to justify injunctive relief.” UBU/Elements, Inc. v. Elements Pers. Care, Inc., 2016 U.S. Dist. LEXIS 110544, *20 (E.D. Pa. Aug. 19, 2016).

Simply put, Defendants are not harmed by being precluded from using a trademark that they had no right to use in the first place. Additionally, Defendants are not harmed because they are not prohibited from engaging in business as long as it does not use the Trademark or unfairly compete with Plaintiff using a confusing similar mark. Plaintiff, on the other hand, would unquestionably be harmed by Defendants’ continued unauthorized use of its trademark. See Northeastern Lumber Mfrs. Ass’n., 2016 U.S. Dist. LEXIS 179951 at *6-7. Accordingly, the balance of harms plainly favors the granting of the requested relief.

D. The Public Interest Favors The Requested Relief

The public interest typically at stake in trademark infringement actions is the “interest in prevention of confusion, particularly as it affects the public interest in truth and accuracy.” Kos Pharms., 369 F3d at 730. Moreover, “the basic public interest implicated in nearly all Lanham Act cases is ‘the interest in prevention of confusion, particularly as it affects the public interest in truth and accuracy.’” MNI Mgmt., Inc., 542 F. Supp. 2d 389 at 419 (citations omitted). This interest is plainly implicated here, as Defendants are using counterfeit WYAM marks in order to deceive the public that their products are associated with Plaintiff, which they are not. Further, the Verified Complaint is filled with myriad examples of actual confusion – all of which is contrary to the public interest. That is, it is contrary to the public interest to have the public confused about the source of the goods at issue.

Interestingly, the public requires this injunction almost as much as Plaintiff so they too can properly identify the product and brand at issue, and not associate one product with the owner of a different product. Indeed, this is the epitome of intellectual property law and rights. Thus, the public interest in truth and accuracy plainly favors the requested relief.

E. Plaintiff Is Entitled To Expedited Discovery

In an effort to reach a quick resolution of this matter and limit any negative impact on Plaintiff's clear rights in its Trademark, the Court should order expedited discovery on the issues concerning Defendants' infringement and unfair competition set forth herein, only to the extent of Defendants' denial thereof. The requested expedited discovery is reasonably calculated to lead to the discovery of admissible evidence pursuant to Rule 26 of the Federal Rules of Civil Procedure, is necessary to prevent irreparable harm to the Plaintiff, and will aid this Court's final resolution of this matter. Rule 26 of the Federal Rules of Civil Procedure provides courts with very broad discretion in the management of the discovery process. Upon motion, the Court may grant leave to conduct discovery prior to a Rule 26(f) conference amongst the parties for, among other reasons, the interests of justice. Fed. R. Civ. P. 26(d). Courts look to whether the expedited discovery request is reasonable in the light of all the circumstances, noting factors such as whether it is being requested in aid of a preliminary injunction hearing. See generally, Better Packages, Inc. v. Zheng, 2006 U.S. Dist. LEXIS 30119, *8-15 (D.N.J. May 17, 2006).

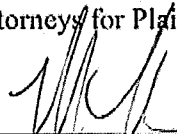
In light of the substantial, immediate and irreparable harm to Plaintiff that has already resulted from Defendants' actions and omissions, narrowly tailored expedited discovery limited to Defendants' denial of the allegations asserted herein is warranted, appropriate, and in the interests of justice.

CONCLUSION

For all of the foregoing reasons as well as those stated in the Verified Complaint, Plaintiff respectfully requests that this Court enter the Preliminary Injunction and associated relief requested in the Order to Show Cause as well as expedited discovery as outlined therein.

OLENDERFELDMAN LLP
Attorneys for Plaintiff

BY:



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CHRISTIAN J. JENSEN (CJ 6100)
OlenderFeldman LLP
422 Morris Avenue
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Attorneys for Plaintiff
Watch Yo Mouth, LLC

Dated: February 2, 2017

Michael J. Feldman, Esq. (MF 7889)
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422 Morris Avenue
Summit, New Jersey 07901
(908) 964-2485
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

<p>WATCH YO MOUTH, LLC, Plaintiff, -against- DENBIGH AND ASSOCIATES, LLC d/b/a SKYLER INNOVATIONS, LLC and PETER DENBIGH, Defendants.</p>	<p>ECF Civil Action No. [PROPOSED] ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION AND EXPEDITED DISCOVERY</p>
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THIS MATTER being brought before the Court by OlenderFeldman LLP, counsel for Plaintiff Watch Yo Mouth, LLC ("Plaintiff") for an Order requiring Defendants Denbigh and Associates, LLC d/b/a Skyler Innovations ("Skyler") and Peter Denbigh (collectively "Defendants") to Show Cause why a Preliminary Injunction should not be entered against them pursuant to Fed. R. Civ. P. 65, due to their unfair competition with Plaintiff and infringement of Plaintiff's Trademark as defined in the accompanying Verified Complaint dated January 31, 2017 through the Infringing Game, Infringing Mark and Infringing Website as defined in the accompanying Verified Complaint, all in violation of 15 U.S.C §1125(a), N.J.S.A. §56:4-1, et seq.,

N.J.S.A. §56:3-13.16(a)(1)-(2) and New Jersey common law based upon the facts set forth in the Verified Complaint; and the Defendants having been given notice of this Order to Show Cause through provision of a copy of the Verified Complaint, Order to Show Cause and accompanying memorandum of law to a process server on February 2, 2017 to effectuate personal service on Defendants and by sending a copy of same (via overnight mail) to Defendants' counsel, Royal Craig, Esq. on February 2, 2017 thereby advising Defendants and Defendants' counsel of Plaintiff's intent to seek the relief set forth herein, and the Court having determined that good and sufficient reasons exist to proceed by way of Order to Show Cause, and the Court having determined for good cause shown;

IT IS on this _____ day of _____, 2017 **ORDERED** that Defendants Denbigh and Associates, LLC d/b/a Skyler Innovations and Peter Denbigh appear and show cause before the United States District Court for the District of New Jersey at the Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, New Jersey 08608, at ____ o'clock __.M. or as soon thereafter as counsel can be heard, on the ____ day of _____, 2017, why an Order should not be issued:

A. Preliminarily enjoining, restraining and prohibiting Defendants and their respective officers, agents, servants, employees, licensees, agents, subsidiaries, affiliates and/or assigns and those persons in active concert or participation with them who received actual notice of the Order by personal service or otherwise, from:

1. Registering, owning, leasing, selling, trafficking or using the name or words "Watch Ya Mouth" or which uses or incorporates in whole or in part the Trademark "Watch Yo Mouth" (the "Trademark"), however spelled, whether capitalized, abbreviated, singular or plural, printed or stylized, whether used alone or in

conjunction with any word or words, and whether used in caption, text, orally, or otherwise) or any derivative thereof, or any mark which is confusingly similar to the Trademark in connection with any business, product (including the Infringing Game as defined in the Verified Complaint), marketing campaign or Internet domain name (including the Infringing Website as defined in the Verified Complaint), or as a trademark, trade name or service mark;

2. Infringing the Trademark or otherwise unfairly competing with Plaintiff;
3. Using, reproducing, advertising or promoting any slogan, mark, or name that may be calculated to represent that the products or services of Defendants or any other person are sponsored by, authorized by, or in some way associated with Plaintiff;
4. Using or reproducing any word, term, name, or symbol, or any combination thereof, on any product or in connection with any service that confuses or falsely represents or misleads, is calculated to confuse, falsely represent, or mislead, or that has the effect of confusing, falsely representing, or misleading, that the products, services, or activities of Defendants or another are in some way connected with Plaintiff, or is sponsored, approved, or licensed by Plaintiff;
5. Inducing, encouraging, aiding, abetting, or contributing to any of the aforesaid acts.

B. Requiring Defendants to immediately (pending further Order of the Court):

1. Shut down and cease operation of, and sales through, the Infringing Website www.wymgame.com and any related domains owned by Defendants to the extent same is used to market, promote, sell, distribute or otherwise reference any product,

name, trade name, trademark or logo in violation of, or contrary to, Section A above;

2. Remove all products for sale (through license or otherwise) from all brick and mortar retailers/stores including, but not limited to, any product using the name or words "Watch Ya Mouth" or which uses or incorporates in whole or in part any name, trade name, trademark or logo in violation of, or contrary to, Section A above;

3. Remove all products for sale (through license or otherwise) from online or eCommerce retailers/stores including, but not limited to, any product using the name or words "Watch Ya Mouth" or which uses or incorporates in whole or in part any name, trade name, trademark or logo in violation of, or contrary to, Section A above;

4. Cancel (and advise all distributors or retailers to cancel) all pending sales or orders of any product using the name or words "Watch Ya Mouth" or which uses or incorporates in whole or in part any name, trade name, trademark or logo in violation of, or contrary to, Section A above;

5. Pull, cancel and/or retract all marketing, advertising or promotional materials (both paper and digital) and all documents whatsoever and of whatever nature or form relative to the Infringing Game and/or using the Infringing Mark including, but not limited to, any such material using the name or words "Watch Ya Mouth" or which uses or incorporates in whole or in part any name, trade name, trademark or logo in violation of, or contrary to, Section A above;

6. Provide Plaintiff with copies of all orders and pending orders of any product

using the name or words "Watch Ya Mouth" or which uses or incorporates in whole or in part the Trademark "Watch Yo Mouth" (however spelled, whether capitalized, abbreviated, singular or plural, printed or stylized, whether used alone or in conjunction with any word or words, and whether used in caption, text, orally, or otherwise) or any derivative thereof or any mark which is confusingly similar to the Trademark to allow service of this Order upon all retailers (online and otherwise) and distributors;

7. Provide Plaintiff with a list of all licensees of "Watch Ya Mouth" or any product any product using the name or words "Watch Ya Mouth" or which uses or incorporates in whole or in part the Trademark "Watch Yo Mouth" (however spelled, whether capitalized, abbreviated, singular or plural, printed or stylized, whether used alone or in conjunction with any word or words, and whether used in caption, text, orally, or otherwise) or any derivative thereof or any mark which is confusingly similar to the Trademark to allow service of this Order upon said licensees.

C. Ordering that Defendants file with this Court and serve on counsel for Plaintiff within 10 days after service on Defendant of such Order, or within such period as this Court may direct, a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with this Order.

D. Granting such other relief as the Court deems equitable and just; and

IT IS FURTHER ORDERED that the parties shall be entitled to take expedited discovery as follows:

- (1) The parties may serve written discovery by no later than _____, 2017. Written responses thereto, including all objections, as well as the production of requested documents, shall be served within _____ calendar days after receipt of such written discovery. Any disputes over objections to written discovery shall be resolved by letter application to the Court on three (3) calendar days' notice.
- (2) Each party may serve up to two (2) notices of depositions of parties, including pursuant to Fed. R. Civ. P. 30(b)(6), on five (5) days' notice, with locations to be agreed upon by counsel. If the parties cannot agree on the date and time for depositions, they shall be fixed by the Court on application of any party. Such application may be made on an expedited basis by letter to the Court and may be decided by telephone conference scheduled by the Court; and

IT IS FURTHER ORDERED THAT:

A. A copy of this Order to Show Cause, a Summons, the Verified Complaint, and the legal memorandum submitted in support of this application shall be served upon Defendants (or Defendants' counsel if known) personally within ___ days of the date hereof, in accordance with Fed. R. Civ. P. 4, this being original process.

B. Plaintiff must file with the Court its proof of service of the pleadings and Order to Show Cause papers on Defendants no later than three (3) days before the return date.

C. Defendants shall file and serve via ECF a written response to this Order to Show Cause and request for entry of preliminary injunctive relief, on or before _____, 2017 (the "Opposition Papers"). A courtesy copy of the Opposition Papers must be sent directly to the Chambers of the Hon. _____,

U.S.D.J.;

D. Plaintiff must file and serve any written reply to the Defendants' Responsive papers ("Reply Papers") on or before _____, 2017; A courtesy copy of the Reply Papers must be sent directly to the Chambers of the Hon. _____, U.S.D.J..

E. This motion shall be orally argued by the parties, or their counsel, on the return date set forth in this order unless the Defendants do not file and serve Responsive Papers, in which case the application will be decided on the papers on the return date and relief may be granted by default, provided that Plaintiff files a proof of service and a proposed form of order at least three (3) days prior to the return date.

JS 44 (Rev. 07/16)

CIVIL COVER SHEET

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

<p>I. (a) PLAINTIFFS Watch Yo Mouth, LLC</p> <p>(b) County of Residence of First Listed Plaintiff <u>Monmouth, NJ</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, Email and Telephone Number) Michael J. Feldman, Esq., OlenderFeldman LLP, 422 Morris Avenue, Summit, New Jersey 07901; mfeldman@olenderfeldman.com; (908) 964-2485</p>	<p>DEFENDANTS Denbigh and Associates, LLC d/b/a Skyler Innovations, and Peter Denbigh</p> <p>County of Residence of First Listed Defendant <u>Augusta, VA</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p><i>(For Diversity Cases Only)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

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

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input checked="" type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395m)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 430 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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V. ORIGIN (Place an "X" in One Box Only)

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

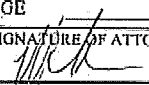
VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. 1126

Brief description of cause:
Unfair competition under Lanham Act

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 02/02/2017 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation - Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation - Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested In Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.