

1 Sterling A. Brennan (CA State Bar No. 126019)
E-Mail: sbrennan@mabr.com
2 Tyson K. Hottinger (CA State Bar No. 253221)
E-Mail: thottinger@mabr.com
3 MASCHOFF BRENNAN LAYCOCK
GILMORE ISRAELSEN & WRIGHT, PLLC
4 20 Pacifica, Suite 1130
Irvine, California 92618
5 Telephone: (949) 202-1900
Facsimile: (949) 453-1104
6

7 C.J. Veverka (*pro hac vice*)
E-Mail: cveverka@mabr.com
8 Rachel Jacques (*pro hac vice*)
E-Mail: rjacques@mabr.com
9 MASCHOFF BRENNAN LAYCOCK
GILMORE ISRAELSEN & WRIGHT, PLLC
10 1389 Center Drive, Suite 300
Park City, Utah 84098
11 Telephone: (435) 252-1360
Facsimile: (435) 252-1361
12

13 Attorneys for Defendants and Counterclaimants DAN FARR PRODUCTIONS, LLC,
DANIEL FARR, and BRYAN BRANDENBURG
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15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 SAN DIEGO COMIC CONVENTION,
18 a California nonprofit corporation,

19 Plaintiff,

20 v.

21 DAN FARR PRODUCTIONS, a Utah
22 limited liability company;
23 NEWSPAPER AGENCY COMPANY,
24 a Utah limited liability company;
25 DANIEL FARR, an individual; and
26 BRYAN BRANDENBURG, an
individual,

27 Defendants.
28

Case No. 14-cv-1865-AJB-JMA

**DEFENDANTS AND
COUNTERCLAIMANTS DAN FARR
PRODUCTIONS, DAN FARR, AND
BRYAN BRANDENBURG'S FIRST
AMENDED ANSWER AND
COUNTERCLAIMS; DEMAND FOR
JURY TRIAL**

HON. ANTHONY J. BATTAGLIA
UNITED STATES DISTRICT JUDGE
COURTROOM 3B

1 DAN FARR PRODUCTIONS, a Utah
2 limited liability company; DANIEL
3 FARR, an individual; and BRYAN
4 BRANDENBURG, an individual,

5 Counterclaimants,

6 v.

7 SAN DIEGO COMIC CONVENTION,
8 a California nonprofit corporation,

9 Counterdefendant.

10
11 Defendants and Counterclaimants Dan Farr Productions, Daniel Farr, and Bryan
12 Brandenburg (“Defendants”) by and through counsel of record, hereby answer Plaintiff
13 San Diego Comic Convention’s (“SDCC”) Complaint as follows:

14 **THE PARTIES, JURISDICTION AND VENUE**

15 1. Defendants are presently without information sufficient to definitively
16 confirm the truth of the allegations of paragraph 1 of the Complaint, and on that basis
17 deny the allegations.

18 2. Defendants admit that defendant Dan Farr Productions, LLC is a limited
19 liability company organized and existing under the laws of the State of Utah, and has its
20 principal place of business in Salt Lake City, Utah.

21 3. Defendants are presently without information sufficient to definitively
22 confirm the truth of the allegations of paragraph 3 of the Complaint, and on that basis
23 deny the allegations.

24 4. Defendants admit that Daniel Farr is a co-founder of the Salt Lake Comic
25 Con convention and that he resides in Utah.

26 5. Defendants admit that Bryan Brandenburg is a co-founder of the Salt Lake
27 Comic Con convention and that he resides in Utah.

1 12. Defendants are presently without information sufficient to definitively
2 confirm the truth of the allegations of paragraph 12 of the Complaint, and on that basis
3 deny the allegations.

4 13. Defendants are presently without information sufficient to definitively
5 confirm the truth of the allegations of paragraph 13 of the Complaint, and on that basis
6 deny the allegations.

7 14. Defendants are presently without information sufficient to definitively
8 confirm the truth of the allegations of paragraph 14 of the Complaint, and on that basis
9 deny the allegations.

10 15. Defendants are presently without information sufficient to definitively
11 confirm the truth of the allegations of paragraph 15 of the Complaint, and on that basis
12 deny the allegations.

13 16. Defendants deny the allegations of paragraph 16 of the Complaint.

14 17. Defendants admit that defendant Daniel Farr stated one purpose of Salt Lake
15 Comic Con is to “bring[] comics, fan art, sci-fi, anime, fantasy, film and TV and their
16 associated comic creator, artist, actor, performer and author celebrities to meet and
17 interact with their fans” and that this statement appeared on the website
18 www.saltlakecitycomiccon.com (“Salt Lake Comic Con website”). Defendants deny the
19 remaining allegations of paragraph 17 of the Complaint.

20 18. Defendants deny the allegations of paragraph 18 of the Complaint.

21 19. Defendants admit that they advertise, market, and sell merchandise,
22 including t-shirts, sweatshirts, hats, blankets, bags, mugs, phone cases, flags, and key
23 chains via the Salt Lake Comic Con website. Defendants are presently without
24 information sufficient to definitively confirm the truth of the allegations of paragraph 19
25 of the Complaint concerning the sale of “much more,” and on that basis deny those
26 allegations. Defendants state that the webpage printouts attached as Exhibit B to the
27 Complaint appear to be true and correct printouts from the Salt Lake Comic Con website.
28 Defendants deny the remaining allegations of paragraph 19 of the Complaint.

1 20. Defendants admit that an Audi R8 containing advertisements for the Salt
2 Lake Comic Con convention was driven around the locale of the San Diego Comic Con
3 convention during said convention and that the words “Comic Con” appeared on the front
4 of said car where the license plate is normally found. Defendants state that Exhibit C
5 appears to be true and correct pictures of the Audi R8 referenced in paragraph 20 parked
6 in front of the Hyatt Hotel. Defendants deny the remaining allegations of paragraph 20 of
7 the Complaint.

8 21. Defendants admit that one use of the Audi R8 was to advertise the upcoming
9 Salt Lake Comic Con convention held on September 4-6, 2014 and that the vehicle was
10 driven to a hotel near the San Diego Comic Con. Defendants are presently without
11 information sufficient to definitively confirm the truth of the remaining allegations of
12 paragraph 21 of the Complaint, and on that basis deny those allegations.

13 22. Defendants deny the allegations of paragraph 22 of the Complaint.

14 23. Defendants admit that they use Salt Lake Comic Con to promote their
15 convention. Defendants deny the remaining allegations of paragraph 23 of the
16 Complaint.

17 24. Defendants deny the allegations of paragraph 24 of the Complaint.

18 25. Defendants deny the allegations of paragraph 25 of the Complaint.

19 26. The link found in paragraph 26 of the Complaint to an article allegedly
20 published in April of 2014 redirects to the general landing page of
21 <http://www.foliomag.com/> and not the article referred to in paragraph 26 of the
22 Complaint. As such, Defendants are presently without information sufficient to
23 definitively confirm the truth of the allegations of paragraph 26 of the Complaint
24 concerning the article, and on that basis deny those allegations. Defendants deny the
25 remaining allegations of paragraph 26 of the Complaint.

26 27. Defendants deny the allegations of paragraph 27 of the Complaint.

27 28. Defendants deny the allegations of paragraph 28 of the Complaint.

28 29. Defendants deny the allegations of paragraph 29 of the Complaint.

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SECOND CAUSE OF ACTION
(FALSE DESIGNATION OF ORIGIN - 15 U.S.C. § 1125(a))
AGAINST ALL DEFENDANTS

44. Defendants incorporate by reference all of their preceding responses to the Complaint as though fully set forth hereat.

45. Defendants deny the allegations of paragraph 45 of the Complaint.

46. Defendants deny the allegations of paragraph 46 of the Complaint.

47. Defendants deny the allegations of paragraph 47 of the Complaint.

48. Defendants deny the allegations of paragraph 48 of the Complaint.

PRAYER FOR RELIEF

Defendants are not required to respond to the prayer for judgment and relief in the Complaint. Nonetheless, to the extent that the paragraphs of the Complaint in that section may be deemed to allege any factual or legal entitlements to the relief requested, Defendants deny each and every such allegation, and specifically deny that SDCC is entitled to the requested, or any, relief.

DEFENDANTS’ ADDITIONAL AND AFFIRMATIVE DEFENSES

Without admitting or acknowledging what must be alleged by way of affirmative defenses or that Defendants bear the burden of proof as to any of the defenses set forth herein, Defendants allege the following as additional or affirmative defenses to the Complaint and to the relief sought therein:

First Defense: Failure to State a Claim

The Complaint fails to state a claim against Defendants upon which relief can be granted.

Second Defense: Abandonment

SDCC’s claims are barred in whole or in part because SDCC has abandoned the trademarks asserted against Defendants.

1 ***Third Defense: Permission***

2 SDCC's claims are barred in whole or in part because SDCC has acquiesced to
3 Defendants' use of the asserted trademarks.

4 ***Fourth Defense: Unclean Hands***

5 SDCC's claims are barred in whole or in part under the doctrine of unclean hands.

6 ***Fifth Defense: Generic Mark***

7 SDCC's claims are barred in whole or in part because SDCC's asserted trademarks
8 are generic.

9 ***Sixth Defense: Noninfringement***

10 SDCC's claims are barred in whole or in part because Defendants have not
11 infringed the asserted trademarks.

12 ***Seventh Defense: No Damage***

13 SDCC's claims are barred in whole or in part on the ground that SDCC has not
14 been sufficiently damaged to obtain any requested relief.

15 ***Eighth Defense: Estoppel***

16 SDCC's claims are barred in whole or in part under the doctrine of estoppel.

17 ***Ninth Defense: Failure to Estoppel***

18 If SDCC suffered any injury or damage as alleged in its claims, such injury or
19 damage was caused, in whole or in part, by the intentional acts, omissions, recklessness,
20 carelessness, or negligence of SDCC, and SDCC's damages, if any, against Defendants
21 should be reduced accordingly.

22 ***Tenth Defense: Laches***

23 SDCC's claims are barred in whole or in part under the doctrine of laches.

24 ***Eleventh Defense: Descriptiveness***

25 SDCC's claims are barred in whole or in part because one or more of the asserted
26 trademarks are descriptive.

1 ***Twelfth Defense: Lack of Secondary Meaning***

2 SDCC’s claims are barred in whole or in part because one or more of the asserted
3 trademarks lack inherent distinctiveness and have not acquired secondary meaning.

4 ***Defendants’ Further Additional Defenses***

5 In addition to the defenses set forth above, Defendants reserve the right to raise,
6 assert, rely upon, or add any new or additional defenses under Rule 8(c) of the Federal
7 Rules of Civil Procedure, the laws of the United States, the laws of any other governing
8 jurisdictions that may exist or in the future be applicable based on discovery and further
9 factual investigation in this Action, and reserve the right to amend any and all defenses
10 set forth above as discovery proceeds.

11 **COUNTERCLAIMS**

12 Defendants and Counterclaimants Dan Farr, LLC (“Dan Farr Productions”), Daniel
13 Farr (“Farr”), and Bryan Brandenburg (“Brandenburg”) (collectively
14 “Counterclaimants”) hereby assert the following first amended counterclaims against
15 Plaintiff and Counterdefendant San Diego Comic Convention (“SDCC”).

16 **NATURE OF THE ACTION**

17 1. This action arises and is brought under the Declaratory Judgment Act, 28
18 U.S.C. §§ 2201-2202 and the trademark laws of the United States, 15 U.S.C. §§ 1051, *et*
19 *seq.*, and seeks a declaration that Counterclaimants do not infringe SDCC’s asserted
20 trademarks under either 15 U.S.C. §§ 1114 or 1125(a). Additionally, Counterclaimants
21 seek a declaration that the asserted trademarks be declared invalid and ordered cancelled
22 pursuant to 15 U.S.C. § 1119.

23 **PARTIES’ JURISDICTION AND VENUE**

24 2. Dan Farr Productions is a limited liability company organized and existing
25 under the laws of the State of Utah, and has its principal place of business in Salt Lake
26 City, Utah.

27 3. Farr is a co-founder of the Salt Lake Comic Con convention, is the
28 managing member of Dan Farr Productions, LLC, and resides in Utah.

- 1 • Washington – under the name “Emerald City Comicon” (*see*
2 emeraldcitycomicon.com);
- 3 • Michigan – under the name “Motor City Comic Con” (*see*
4 www.motorcitycomiccon.com);
- 5 • Arizona – under the name “Phoenix Comic Con” (*see*
6 www.phoenixcomicon.com);
- 7 • Ohio – under the name “Ohio Comic Con” (*see*
8 <http://www.wizardworld.com/home-ohio.html>);
- 9 • Pennsylvania – under the names “Pittsburg Comicon” (*see*
10 www.pittsburghcomicon.com) and “Wildcat Comic Con” (*see*
11 www.wildcatcomiccon.pct.edu); and
- 12 • Oregon – under the name “Rose City Comic Con” (*see*
13 www.rosecitycomiccon.com).

14 12. On information and belief, SDCC has not policed or contested the use of
15 “comic con” or “comic-con” by the above identified third parties nor other third party
16 users which produce competing comic conventions and has allowed competing third
17 party comic cons to advertise at SDCC’s own convention.

18 13. On information and belief, SDCC has allowed competitors and consumers to
19 use the words “comic con” or “comic-con” as the generic name for comic conventions.

20 14. On information and belief, SDCC has engaged in naked licensing of its
21 asserted marks.

22 15. On information and belief, the media and those within the relevant industry
23 have and continue to use the words “comic con” or “comic-con” as generic terms for
24 comic conventions.

25 16. On information and belief, the general public understands the words “comic
26 con” or “comic-con” to refer generally to a comic convention and does not associate
27 these words with any particular source of such conventions.

1 **FIRST CAUSE OF ACTION**

2 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

3 17. Counterclaimants hereby reallege and incorporate paragraphs 1-15 of the
4 Counterclaims as if set forth in full hereat.

5 18. SDCC has accused Counterclaimants of trademark infringement pursuant to
6 15 U.S.C. §§ 1114 and 1125(a).

7 19. Counterclaimants deny SDCC’s allegations of trademark infringement as
8 contained in their Answer and Counterclaims as set forth above.

9 20. SDCC’s allegations of infringement pose a threat to Counterclaimants’
10 business and have and will continue to harm Counterclaimants until such claims are
11 resolved.

12 21. As a result of the foregoing, an actual case or controversy exists regarding
13 SDCC’s allegations of trademark infringement.

14 22. Counterclaimants have no adequate remedy at law and therefore seek
15 declaratory judgment pursuant to 28 U.S.C. §§ 2201–02 that Counterclaimants have not
16 infringed SDCC’s asserted trademarks.

17 23. Counterclaimants additionally seek any further relief deemed appropriate by
18 this Court pursuant to 28 U.S.C. § 2202.

19 **SECOND CAUSE OF ACTION**

20 **DECLARATORY JUDGMENT OF TRADEMARK INVALIDITY AND**
21 **CANCELLATION**

22 24. Counterclaimants hereby reallege and incorporate paragraphs 1-22 of the
23 Counterclaims as if set forth in full hereat.

24 25. SDCC’s asserted trademarks are generic and/or abandoned under applicable
25 United States law based at least on the circumstances that SDCC has failed to police or
26 contest competitors’ use of the terms “comic con” and “comic-con” as generic terms for
27 comic conventions, has engaged in naked licensing of its asserted marks and consumers,
28

1 those within the relevant industry and the media understand these terms to be generic
2 terms for comic conventions, and use such terms generically.

3 26. Pursuant to 15 U.S.C. §§ 1064 and 1119, SDCC's asserted trademarks are
4 invalid and should be cancelled because they are generic and/or because SDCC has
5 abandoned its rights in the asserted trademarks.

6 27. SDCC's allegations of infringement against Counterclaimants' business
7 have and will continue to harm Counterclaimants until such claims are resolved.

8 28. SDCC's allegations of trademark infringement against Counterclaimants
9 indicate SDCC's belief in the enforceability and validity of its asserted trademarks.

10 29. Based on the foregoing, an actual case or controversy exists regarding the
11 validity of SDCC's asserted trademarks.

12 30. Counterclaimants have no adequate remedy at law and therefore seek
13 declaratory judgment pursuant to 28 U.S.C. §§ 2201–02 and 15 U.S.C. §§ 1064 and 1119
14 that SDCC's asserted trademarks are invalid and cancellation of the marks.

15 31. Counterclaimants additionally seek any further relief deemed appropriate by
16 this Court pursuant to 28 U.S.C. § 2202.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Counterclaimants request relief as follows:

- 19 1. That SDCC take nothing by the Complaint;
 - 20 2. A declaration of non-infringement with respect to SDCC's asserted
21 trademarks;
 - 22 3. A declaration that SDCC's asserted trademarks are invalid and cancellation
23 of the same;
 - 24 4. An declaration that SDCC's claims are meritless and exceptional;
 - 25 5. An award of Defendants' costs of suit, attorney's fees, and expenses in
26 defending against the Complaint; and
 - 27 6. Such other and further relief as this Court shall deem just and proper.
- 28

DEMAND FOR JURY TRIAL

Pursuant to Rule 38, Defendants and Counterclaimants demand TRIAL BY JURY of all issues so triable, whether presented by SDCC’s claims against Defendants, Defendants and Counterclaimants’ Counterclaims against SDCC, or otherwise.

DATED: November 7, 2014

Sterling A. Brennan
C.J. Veverka
Tyson K. Hottinger
Rachael Jacques
MASCHOFF BRENNAN LAYCOCK
GILMORE ISRAELSEN & WRIGHT, PLLC

By: /s/ Tyson K. Hottinger

Tyson K. Hottinger
Attorneys for Defendants and Counterclaimants
DAN FARR PRODUCTIONS, DANIEL FARR, AND
BRYAN BRANDENBURG