

1 **J. Clark Law Firm, PLLC**
Justin Clark (#030159)
2 40 North Central Avenue, Suite 1400
3 Phoenix, AZ 85004
4 Phone: 602-343-1884
5 Fax: 602-343-1801
6 Email: jmc@jclarklawfirm.com
Attorneys for Plaintiff

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF ARIZONA**

9 ADULT PRINTED DIAPERS, LLC,
10 Plaintiff,
11 vs.
12 REARZ, Inc., Cooshie Tooshiez, LLC D/B/A/
13 Crown Diapers, Faithfulness, LLC, Personal
14 Care Medical Supplies, Northeast Mobility
15 Center, SoftCradle.com, Daynitecare.ca,
16 Littleforbig.com
17 Defendants.

No.:
COMPLAINT
JURY DEMAND

18
19
20
21
22 Plaintiff Adult Printed Diapers, LLC (“APD”) for its Complaint against Defendants,
23 hereby alleges as follows:

24 **THE PARTIES**

25 1. APD is an Arizona limited liability company with its principal place of business at 3658
26

1 E. Chipman Road, Phoenix AZ 85040. APD is engaged in the business of selling diapers and
2 incontinence pads to adults.

3 2. Upon information and belief, Defendant Rearz, Inc. is a Canadian corporation.

4 3. Upon information and belief, Defendant Cooshie Tooshiez, LLC D/B/A/ Crown Diapers,
5 is a Utah limited liability company.

6 4. Upon information and belief, Defendant Faithfulness, LLC is a California limited liability
7 company.

8 5. Upon information and belief, Defendant Personal Care Medical Supplies is an Indiana
9 business.

10 6. Upon information and belief, Defendant Northeast Mobility Center is a New York
11 business.

12 7. Upon information and belief, LittleForBig.com is an unincorporated business operated by
13 a Chinese citizen.

14 8. Upon information and belief, Defendant Daynitecare.ca is a Canadian company.

15 9. Upon information and belief, Defendant SoftCradle.com is a California company.

16 **JURISDICTION AND VENUE**

17 10. This action asserts claims arising, *inter alia*, under the Lanham Act, 15 U.S.C. §§
18 1114(1), 1125(a) and 1125(c) and the U.S. Copyright Act, 17 U.S.C et seq. This court has
19 federal question jurisdiction over these claims pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§
20 1331, 1338(a) and 1338(b). This Court also has subject matter jurisdiction over APD's state law
21 claims pursuant to 28 U.S.C. §§ 1332 and 1367(a).

22 11. This Court has personal jurisdiction over Defendants because, *inter alia*, Defendants
23 transact business in the State of Arizona, engage in a persistent course of conduct in the State of
24 Arizona, expect or reasonably should expect their acts to have legal consequences in the State of
25 Arizona, and because Defendants' acts have caused harm and continue to cause harm to APD in
26 the State of Arizona.

1 12. Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 1391 because a
2 substantial part of the events giving rise to the claims asserted in this action occurred in Arizona,
3 Defendants expect or reasonably should expect their acts to have legal consequences in the
4 District, and because Defendants' acts have caused harm and continue to cause harm to APD in
5 the District.

6 **FACTUAL BACKGROUND**

7 **ADP's Intellectual Property Rights**

8 13. APD's products incorporate a creative and original illustration of a combination of bears,
9 binkies, safety pins, and milk bottles. APD's products are marketed under the trademark AWW
10 SO CUTE and the AWW SO CUTE design mark. APD owns a federal registration and
11 common-law trademarks associated with its diaper and apparel business.

12 14. APD uses the mark AWW SO CUTE on product packaging to identify the source of the
13 products it sells. The mark is displayed prominently on all product packaging for its diaper
14 products, as shown immediately below.



25 15. The United States Patent and Trademark Office (“USPTO”) has granted APD Trademark
26

1 Registration No. 4,839,166 for the mark AWW SO CUTE + Design for “disposable adult
2 diapers” in International Class 5. This registration is valid and subsisting on the Principal
3 Register (the “AWW SO CUTE Mark”).

4 16. APD’s products packaged under the AWW SO CUTE Mark are sold through a variety of
5 channels, including on the Internet. As products that are used for health and hygiene, APD
6 maintains strict standards for the handling, storage, and packaging of its goods.

7 17. The AWW SO CUTE Mark has come to be associated exclusively with APD.

8 18. APD is also the owner of a copyright registration for an original, creative design
9 featuring a repeating pattern of a bear, safety pin, milk bottle, and binky entitled “Aww So
10 Cute” (U.S. Copyright Number VA000188174, hereinafter the “Aww So Cute Print”). The
11 Aww So Cute Print appears on all products developed and marketed by APD.

12 19. APD is also the owner of a common law copyright in a series of original, creative
13 photographs featuring models wearing diapers incorporating the Aww So Cute Print and bearing
14 the AWW SO CUTE Mark. APD is in the process of registering the common law copyright for
15 the APD Product and Model Images with the U.S. copyright office.

16 **DEFENDANTS’ INFRINGEMENT OF**
17 **APD’S INTELLECTUAL PROPERTY RIGHTS**

18 20. On information and belief, without APD’s approval or authorization, Defendant Rearz.ca
19 contacted APD’s supplier in China, Shandong Mimosa Hygienic Technology Co. Ltd. in
20 Shandong Province, China and asked to purchase inventory that had been manufactured
21 specifically for APD. Shandong Mimosa Hygienic Technology Co. Ltd., without APD’s
22 authorization or approval, sold the inventory that it had on-hand for APD.

23 21. On information and belief, Defendant Rearz.ca purchased and imported the APD
24 inventory from Shandong Mimosa Hygienic Technology Co. Ltd. into Canada where Rearz.ca
25 took ownership of the inventory and stored it in its warehouse. Neither APD nor its designated
26 inspection company inspected the delivered inventory to ensure that it met APD’s quality

1 control standards.

2 22. Defendant Rearz, Inc. has purchased and sold products bearing the AWW SO CUTE
3 Mark without APD's approval or authorization.

4 23. On information and belief, Defendant Rearz, Inc. has used the AWW SO CUTE Mark
5 and other variations of the AWW SO CUTE mark as a keyword in several Internet keyword
6 advertising programs, without APD's approval or authorization and furthermore did not properly
7 attribute the mark to APD. Defendant Rearz, Inc. has used such keywords to boost traffic to
8 Rearz, Inc. website to the exclusion of APD's websites and distribution channels. Such activities
9 have resulted in increased sales revenue for Rearz, Inc. and a corresponding decrease in sales for
10 APD.

11 24. On information and belief, Defendant Rearz, Inc. has used an advertising and marketing
12 program known as the "Mystery Box" whereby customers receive a shipment of products from
13 Rearz.ca of products that are not disclosed upon check-out by a customer, giving the false
14 impression to a customer that they will receive a product that will meet their needs and
15 requirements. On at least one occasion, a customer of Rearz, Inc. received a product bearing the
16 AWW SO CUTE Mark under the "Mystery Box" program but was confused about the
17 relationship between APD and Rearz, Inc.

18 25. Defendant Rearz, Inc.'s unauthorized use of APD's AWW SO CUTE Mark, and
19 confusingly similar variations thereof, on product packaging for products shipped by Rearz, Inc.,
20 and as keywords in connection with Rearz, Inc. online advertising, is likely to confuse, mislead,
21 and deceive consumers as to the source of products available from Rearz, Inc. Moreover, the
22 inclusion of APD's products bearing the AWW SO CUTE Mark as part of the "Mystery Box"
23 program is likely to mislead consumers as to the quality and characteristics of genuine APD
24 products.

25 26. On information and belief, Defendant Rearz, Inc.'s actions are willful and reflect an
26 intent to confuse consumers and profit from the goodwill and consumer recognition associated

1 with APD's AWW SO CUTE Mark.

2 27. Rearz, Inc. uses some of the same channels of distribution and directs products to the
3 same target marks as APD.

4 28. In addition to bearing the AWW SO CUTE Mark, each APD product sold by Rearz, Inc.
5 featured the Aww So Cute Print. On information and belief, Rearz, Inc. used and redistributed
6 the Aww So Cute Print in advertising for APD's products, including on websites, without
7 APD's authorization and without proper attribution to APD. The Aww So Cute Print was used
8 and redistributed without permission from APD.

9 29. On information and belief, Rearz, Inc. also used and redistributed images of APD Product
10 and Model Images in connection with Rearz, Inc.'s own advertising, including on websites,
11 without APD's authorization and without proper attribution to APD. The APD Product and
12 Model Images were used and redistributed without permission from APD.

13 30. Defendant Cooshie Tooshiez has purchased and sold products bearing the AWW SO
14 CUTE Mark without APD's approval or authorization.

15 31. On information and belief, Defendant Cooshie Tooshiez has used the AWW SO CUTE
16 Mark and other variations of the AWW SO CUTE mark as a keyword in several Internet
17 keyword advertising programs, without APD's approval or authorization and furthermore did
18 not properly attribute the mark to APD. Defendant Cooshie Tooshiez has used such keywords to
19 boost traffic to Cooshie Tooshiez website to the exclusion of APD's websites and distribution
20 channels. Such activities have resulted in increased sales revenue for Cooshie Tooshiez and a
21 corresponding decrease in sales for APD. Such activities have resulted in increased sales
22 revenue for Rearz, Inc. and a corresponding decrease in sales for APD.

23 32. Defendant Cooshie Tooshiez's unauthorized use of APD's AWW SO CUTE Mark, and
24 confusingly similar variations thereof, on product packaging for products shipped by Cooshie
25 Tooshiez, and as keywords in connection with Cooshie Tooshiez online advertising, is likely to
26 confuse, mislead, and deceive consumers as to the source of products available from Cooshie

1 Tooshiez.

2 33. On information and belief, Defendant Cooshie Tooshiez's actions are willful and reflect
3 an intent to confuse consumers and profit from the goodwill and consumer recognition
4 associated with APD's AWW SO CUTE Mark.

5 34. Cooshie Tooshiez uses some of the same channels of distribution and directs products to
6 the same target markets as APD.

7 35. In addition to bearing the AWW SO CUTE Mark, each APD product sold by Cooshie
8 Tooshiez featured the Aww So Cute Print. On information and belief, Cooshie Tooshiez used
9 and redistributed the Aww So Cute Print in advertising for APD's products, including on
10 websites, without APD's authorization and without proper attribution to APD. The Aww So
11 Cute Print was used and redistributed without permission from APD.

12 36. On information and belief, Cooshie Tooshiez also used and redistributed images of APD
13 Product and Model Images in connection with Cooshie Tooshiez's own advertising, including
14 on websites, without APD's authorization and without proper attribution to APD. The APD
15 Product and Model Images were used and redistributed without permission from APD.

16 37. Defendant Faithfulness, LLC has purchased and sold products bearing the AWW SO
17 CUTE Mark without APD's approval or authorization.

18 38. On information and belief, Defendant Faithfulness, LLC has used the AWW SO CUTE
19 Mark and other variations of the AWW SO CUTE mark as a keyword in several Internet
20 keyword advertising programs, without APD's approval or authorization and furthermore did
21 not properly attribute the mark to APD. Defendant Faithfulness, LLC has used such keywords to
22 boost traffic to Faithfulness, LLC website to the exclusion of APD's websites and distribution
23 channels. Such activities have resulted in increased sales revenue for Faithfulness, LLC and a
24 corresponding decrease in sales for APD. Such activities have resulted in increased sales
25 revenue for Rearz, Inc. and a corresponding decrease in sales for APD.

26 39. Defendant Faithfulness, LLC's unauthorized use of APD's AWW SO CUTE Mark, and

1 confusingly similar variations thereof, on product packaging for products shipped by
2 Faithfulness, LLC, and as keywords in connection with Faithfulness, LLC online advertising, is
3 likely to confuse, mislead, and deceive consumers as to the source of products available from
4 Faithfulness, LLC.

5 40. On information and belief, Defendant Faithfulness, LLC's actions are willful and reflect
6 an intent to confuse consumers and profit from the goodwill and consumer recognition
7 associated with APD's AWW SO CUTE Mark.

8 41. Faithfulness, LLC uses some of the same channels of distribution and directs products to
9 the same target markets as APD.

10 42. In addition to bearing the AWW SO CUTE Mark, each APD product sold by
11 Faithfulness, LLC featured the Aww So Cute Print. On information and belief, Faithfulness,
12 LLC used and redistributed the Aww So Cute Print in advertising for APD's products, including
13 on websites, without APD's authorization and without proper attribution to APD. The Aww So
14 Cute Print was used and redistributed without permission from APD.

15 43. On information and belief, Faithfulness, LLC also used and redistributed images of APD
16 Product and Model Images in connection with Faithfulness, LLC's own advertising, including
17 on websites, without APD's authorization and without proper attribution to APD. The APD
18 Product and Model Images were used and redistributed without permission from APD.

19 44. Defendant SoftCradle.com has purchased and sold products bearing the AWW SO CUTE
20 Mark without APD's approval or authorization.

21 45. On information and belief, Defendant SoftCradle.com has used the AWW SO CUTE
22 Mark and other variations of the AWW SO CUTE mark as a keyword in several Internet
23 keyword advertising programs, without APD's approval or authorization and furthermore did
24 not properly attribute the mark to APD. Defendant SoftCradle.com has used such keywords to
25 boost traffic to SoftCradle.com website to the exclusion of APD's websites and distribution
26 channels. Such activities have resulted in increased sales revenue for SoftCradle.com and a

1 corresponding decrease in sales for APD.

2 46. Defendant SoftCradle.com's unauthorized use of APD's AWW SO CUTE Mark, and
3 confusingly similar variations thereof, on product packaging for products shipped by
4 SoftCradle.com, and as keywords in connection with SoftCradle.com online advertising, is
5 likely to confuse, mislead, and deceive consumers as to the source of products available from
6 SoftCradle.com.

7 47. On information and belief, Defendant SoftCradle.com's actions are willful and reflect an
8 intent to confuse consumers and profit from the goodwill and consumer recognition associated
9 with APD's AWW SO CUTE Mark.

10 48. SoftCradle.com uses some of the same channels of distribution and directs products to the
11 same target markets as APD.

12 49. In addition to bearing the AWW SO CUTE Mark, each APD product sold by
13 SoftCradle.com featured the Aww So Cute Print. On information and belief, SoftCradle.com
14 used and redistributed the Aww So Cute Print in advertising for APD's products, including on
15 websites, without APD's authorization and without proper attribution to APD. The Aww So
16 Cute Print was used and redistributed without permission from APD.

17 50. On information and belief, SoftCradle.com also used and redistributed images of APD
18 Product and Model Images in connection with SoftCradle.com's own advertising, including on
19 websites, without APD's authorization and without proper attribution to APD. The APD Product
20 and Model Images were used and redistributed without permission from APD.

21 51. Defendant Northeast Mobility Center has purchased and sold products bearing the AWW
22 SO CUTE Mark without APD's approval or authorization.

23 52. On information and belief, Defendant Northeast Mobility Center has used the AWW SO
24 CUTE Mark and other variations of the AWW SO CUTE mark as a keyword in several Internet
25 keyword advertising programs, without APD's approval or authorization and furthermore did
26 not properly attribute the mark to APD. Defendant Northeast Mobility Center has used such

1 keywords to boost traffic to Northeast Mobility Center website to the exclusion of APD's
2 websites and distribution channels. Such activities have resulted in increased sales revenue for
3 Northeast Mobility Center and a corresponding decrease in sales for APD.

4 53. Defendant Northeast Mobility Center's unauthorized use of APD's AWW SO CUTE
5 Mark, and confusingly similar variations thereof, on product packaging for products shipped by
6 Northeast Mobility Center, and as keywords in connection with Northeast Mobility Center
7 online advertising, is likely to confuse, mislead, and deceive consumers as to the source of
8 products available from Northeast Mobility Center.

9 54. On information and belief, Defendant Northeast Mobility Center's actions are willful and
10 reflect an intent to confuse consumers and profit from the goodwill and consumer recognition
11 associated with APD's AWW SO CUTE Mark.

12 55. Northeast Mobility Center uses some of the same channels of distribution and directs
13 products to the same target markets as APD.

14 56. In addition to bearing the AWW SO CUTE Mark, each APD product sold by Northeast
15 Mobility Center featured the Aww So Cute Print. On information and belief, Northeast Mobility
16 Center used and redistributed the Aww So Cute Print in advertising for APD's products,
17 including on websites, without APD's authorization and without proper attribution to APD. The
18 Aww So Cute Print was used and redistributed without permission from APD.

19 57. On information and belief, Northeast Mobility Center also used and redistributed images
20 of APD Product and Model Images in connection with Northeast Mobility Center's own
21 advertising, including on websites, without APD's authorization and without proper attribution
22 to APD. The APD Product and Model Images were used and redistributed without permission
23 from APD.

24 58. Defendant Personal Care Medical Supplies has purchased and sold products bearing the
25 AWW SO CUTE Mark without APD's approval or authorization.

26 59. On information and belief, Defendant Personal Care Medical Supplies has used the

1 AWW SO CUTE Mark and other variations of the AWW SO CUTE mark as a keyword in
2 several Internet keyword advertising programs, without APD's approval or authorization and
3 furthermore did not properly attribute the mark to APD. Defendant Personal Care Medical
4 Supplies has used such keywords to boost traffic to Personal Care Medical Supplies website to
5 the exclusion of APD's websites and distribution channels. Such activities have resulted in
6 increased sales revenue for Personal Care Medical Supplies and a corresponding decrease in
7 sales for APD.

8 60. Defendant Personal Care Medical Supplies' unauthorized use of APD's AWW SO CUTE
9 Mark, and confusingly similar variations thereof, on product packaging for products shipped by
10 Personal Care Medical Supplies, and as keywords in connection with Personal Care Medical
11 Supplies online advertising, is likely to confuse, mislead, and deceive consumers as to the
12 source of products available from Personal Care Medical Supplies.

13 61. On information and belief, Defendant Personal Care Medical Supplies' actions are willful
14 and reflect an intent to confuse consumers and profit from the goodwill and consumer
15 recognition associated with APD's AWW SO CUTE Mark.

16 62. Personal Care Medical Supplies uses some of the same channels of distribution and
17 directs products to the same target markets as APD.

18 63. In addition to bearing the AWW SO CUTE Mark, each APD product sold by Personal
19 Care Medical Supplies featured the Aww So Cute Print. On information and belief, Personal
20 Care Medical Supplies used and redistributed the Aww So Cute Print in advertising for APD's
21 products, including on websites, without APD's authorization and without proper attribution to
22 APD. The Aww So Cute Print was used and redistributed without permission from APD.

23 64. On information and belief, Personal Care Medical Supplies also used and redistributed
24 images of APD Product and Model Images in connection with Personal Care Medical Supplies'
25 own advertising, including on websites, without APD's authorization and without proper
26 attribution to APD. The APD Product and Model Images were used and redistributed without

1 permission from APD.

2 65. Defendant LittleForBig.com has purchased and sold products bearing the AWW SO
3 CUTE Mark without APD's approval or authorization.

4 66. On information and belief, Defendant LittleForBig.com has used the AWW SO CUTE
5 Mark and other variations of the AWW SO CUTE mark as a keyword in several Internet
6 keyword advertising programs, without APD's approval or authorization and furthermore did
7 not properly attribute the mark to APD.. Defendant LittleForBig.com has used such keywords to
8 boost traffic to LittleForBig.com website to the exclusion of APD's websites and distribution
9 channels. Such activities have resulted in increased sales revenue for LittleForBig.com and a
10 corresponding decrease in sales for APD.

11 67. Defendant LittleForBig.com's unauthorized use of APD's AWW SO CUTE Mark, and
12 confusingly similar variations thereof, on product packaging for products shipped by
13 LittleForBig.com, and as keywords in connection with LittleForBig.com online advertising, is
14 likely to confuse, mislead, and deceive consumers as to the source of products available from
15 LittleForBig.com.

16 68. On information and belief, Defendant LittleForBig.com's actions are willful and reflect
17 an intent to confuse consumers and profit from the goodwill and consumer recognition
18 associated with APD's AWW SO CUTE Mark.

19 69. LittleForBig.com uses some of the same channels of distribution and directs products to
20 the same target markets as APD.

21 70. In addition to bearing the AWW SO CUTE Mark, each APD product sold by
22 LittleForBig.com featured the Aww So Cute Print. On information and belief, LittleForBig.com
23 used and redistributed the Aww So Cute Print in advertising for APD's products, including on
24 websites, without APD's authorization and without proper attribution to APD. The Aww So
25 Cute Print was used and redistributed without permission from APD.

26 71. On information and belief, LittleForBig.com also used and redistributed images of APD

1 Product and Model Images in connection with LittleForBig.com's own advertising, including on
2 websites, without APD's authorization and without proper attribution to APD. The APD Product
3 and Model Images were used and redistributed without permission from APD.

4 72. Defendant Daynitecare.ca has purchased and sold products bearing the AWW SO CUTE
5 Mark without APD's approval or authorization.

6 73. On information and belief, Defendant Daynitecare.ca has used the AWW SO CUTE
7 Mark and other variations of the AWW SO CUTE mark as a keyword in several Internet
8 keyword advertising programs, without APD's approval or authorization and furthermore did
9 not properly attribute the mark to APD.. Defendant Daynitecare.ca has used such keywords to
10 boost traffic to Daynitecare.ca website to the exclusion of APD's websites and distribution
11 channels. Such activities have resulted in increased sales revenue for Daynitecare.ca and a
12 corresponding decrease in sales for APD.

13 74. Defendant Daynitecare.ca's unauthorized use of APD's AWW SO CUTE Mark, and
14 confusingly similar variations thereof, on product packaging for products shipped by
15 Daynitecare.ca, and as keywords in connection with Daynitecare.ca online advertising, is likely
16 to confuse, mislead, and deceive consumers as to the source of products available from
17 Daynitecare.ca.

18 75. On information and belief, Defendant Daynitecare.ca's actions are willful and reflect an
19 intent to confuse consumers and profit from the goodwill and consumer recognition associated
20 with APD's AWW SO CUTE Mark.

21 76. Daynitecare.ca uses some of the same channels of distribution and directs products to the
22 same target markets as APD.

23 77. In addition to bearing the AWW SO CUTE Mark, each APD product sold by
24 Daynitecare.ca featured the Aww So Cute Print. On information and belief, Daynitecare.ca used
25 and redistributed the Aww So Cute Print in advertising for APD's products, including on
26 websites, without APD's authorization and without proper attribution to APD. The Aww So

1 Cute Print was used and redistributed without permission from APD.

2 78. On information and belief, Daynitecare.ca also used and redistributed images of APD
3 Product and Model Images in connection with Daynitecare.ca's own advertising, including on
4 websites, without APD's authorization and without proper attribution to APD. The APD Product
5 and Model Images were used and redistributed without permission from APD.

6 79. At all relevant times, none of the Defendants have ever (1) been an owner of the AWW
7 SO CUTE Mark, the Aww So Cute Print, or the APD Product and Model Images, (2) been a
8 licensee of either the AWW SO CUTE Mark, the Aww So Cute Print, or the APD Product and
9 Model Images, or (3) sought or obtained permission from Aww So Cute, Inc. or APD to use the
10 AWW SO CUTE Mark, the Aww So Cute Print, or the APD Product and Model Images on any
11 products or marketing materials associated with those products.

12 **CLAIMS**

13 **COUNT I:**

14 **FEDERAL TRADEMARK INFRINGEMENT UNDER 15 U.S.C. §1141(1)**

15 **(Against All Defendants)**

16 80. Plaintiff re-alleges and incorporates by reference all matters previously set forth herein.

17 81. Defendants' unauthorized and willful use of AWW SO CUTE's federally registered
18 trademark in connection with the unauthorized re-sale of AWW SO CUTE-branded products
19 constitutes use in commerce. Such use infringes APD's exclusive rights in its federally
20 registered AWW SO CUTE Mark, explicitly misleads consumers as to the source or sponsorship
21 of the Defendants' businesses, and has caused and is likely to cause confusion, mistake or
22 deception as to the source of the Defendants' products, which are operated solely by Defendants.

23 82. The aforesaid acts of Defendants, namely, the unauthorized and willful use of APD's
24 registered mark in connection with the sale of products constitutes trademark infringement in
25 violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

26 83. The aforesaid acts of Defendants have caused and, unless said acts are restrained by this
Court, will continue to cause APD to suffer irreparable injury.

1 84. On information and belief, the Defendants were unjustly enriched by all of the acts
2 alleged in this Count I.

3 85. Defendants and each of them have realized unlawful and unjust profits from the
4 unauthorized and use of the AWW SO CUTE Mark. As such, APD is entitled to disgorgement
5 of each of the Defendants' profits directly and indirectly attributable to each of the Defendants'
6 infringement of the AWW SO CUTE Mark an amount to be established at trial.

7 86. Defendants and each of them have committed all of the aforesaid acts of infringement
8 deliberately, willfully, intentionally, maliciously, and oppressively, without regard to APD's
9 proprietary rights.

10 87. APD is informed and believes and thereupon alleges that Defendants, and each of them,
11 have acted with knowledge and/or reckless disregard of APD's rights such that their acts of
12 copyright infringement as alleged above were, and continue to be, willful, intentional and
13 malicious, subjecting Defendants, and each of them, to liability therefore. Further, Defendants,
14 and each of them, willfully and intentionally misappropriated, palmed-off and/or infringed
15 AWW SO CUTE Mark which renders Defendants, and each of them liable for damages as
16 described herein.

17
18 **COUNT II:**
19 **UNFAIR COMPETITION, FALSE ENDORSEMENT AND FALSE DESIGNATION OF**
20 **ORIGIN UNDER 15 U.S.C. § 1125(a)(1)(A)**
21 **(Against All Defendants)**

22 88. Plaintiff re-alleges and incorporates by reference all matters previously set forth herein.

23 89. Through use of APD's AWW SO CUTE Mark in connection with the sale of products,
24 Defendants are knowingly and intentionally misrepresenting and falsely designating to the
25 general public the affiliation, connection, association, origin, source, sponsorship, endorsement,
26 and approval of Defendants' businesses, and intend to misrepresent and falsely designate to the
general public the affiliation, connection, association, origin, source, approval, endorsement, or

1 sponsorship of the Defendants' businesses so as to create a likelihood of confusion by the public
2 as to the affiliation, connection, association, origin, source, approval, endorsement, and
3 sponsorship of the Defendants' businesses.

4 90. The aforesaid acts of Defendants constitute false endorsement, false designation of
5 origin, and unfair competition in violation of 15 U.S.C. § 1125(a)(1)(A).

6 91. As a direct and proximate result of the foregoing acts of Defendants, APD has been
7 damaged and has suffered and will continue to suffer immediate and irreparable injury.

8 92. On information and belief, the Defendants were unjustly enriched by all of the acts
9 alleged in this Count II.

10 93. Defendants and each of them have realized unlawful and unjust profits from the
11 unauthorized and use of the AWW SO CUTE Mark. As such, APD is entitled to disgorgement
12 of each of the Defendants' profits directly and indirectly attributable to each of the Defendants'
13 infringement of the AWW SO CUTE Mark an amount to be established at trial.

14 94. Defendants and each of them have committed all of the aforesaid acts of infringement
15 deliberately, willfully, intentionally, maliciously, and oppressively, without regard to APD's
16 proprietary rights.

17 95. APD is informed and believes and thereupon alleges that Defendants, and each of them,
18 have acted with knowledge and/or reckless disregard of APD's rights such that their acts of
19 copyright infringement as alleged above were, and continue to be, willful, intentional and
20 malicious, subjecting Defendants, and each of them, to liability therefore. Further, Defendants,
21 and each of them, willfully and intentionally misappropriated, palmed-off and/or infringed
22 AWW SO CUTE Mark which renders Defendants, and each of them liable for damages as
23 described herein.

24
25 **COUNT III:**
26 **FALSE ADVERTISING UNDER 15 U.S.C. § 1125(a)(1)(B)**
(Against Defendant Rearz, Inc.)

1 96. Plaintiff re-alleges and incorporates by reference all matters previously set forth herein.

2 97. Through use of APD's AWW SO CUTE Mark in connection with its "Mystery Box"
3 program, Defendant Rearz, Inc. is knowingly and intentionally misrepresenting the nature,
4 characteristics, and qualities of the Defendants' business, and intend to misrepresent the nature,
5 characteristics, and qualities of the Defendants' products so as to create a likelihood of
6 confusion by the public as to the nature, characteristics, and qualities of the Defendants'
7 products.

8 98. The aforesaid acts of Defendants constitute false advertising in violation of 15 U.S.C. §
9 1125(a)(1)(B).

10 99. As a direct and proximate result of the foregoing acts of Defendants, APD has been
11 damaged and suffered and will continue to suffer immediately and irreparable injury.

12 100. On information and belief, the Defendants were unjustly enriched by all of the acts
13 alleged in this Count II.

14 101. Defendants and each of them have realized unlawful and unjust profits from the
15 unauthorized and use of the AWW SO CUTE Mark. As such, APD is entitled to disgorgement
16 of each of the Defendants' profits directly and indirectly attributable to each of the Defendants'
17 infringement of the AWW SO CUTE Mark an amount to be established at trial.

18 102. Defendants and each of them have committed all of the aforesaid acts of
19 infringement deliberately, willfully, intentionally, maliciously, and oppressively, without regard
20 to APD's proprietary rights.

21 103. APD is informed and believes and thereupon alleges that Defendants, and each of
22 them, have acted with knowledge and/or reckless disregard of APD's rights such that their acts
23 of copyright infringement as alleged above were, and continue to be, willful, intentional and
24 malicious, subjecting Defendants, and each of them, to liability therefore. Further, Defendants,
25 and each of them, willfully and intentionally misappropriated, palmed-off and/or infringed
26 AWW SO CUTE Mark which renders Defendants, and each of them liable for damages as

1 described herein.

2
3 **COUNT IV:**
4 **COPYRIGHT INFRINGEMENT UNDER 17 U.S.C. § 101, et seq.**
5 **(Against All Defendants)**

6 104. APD re-alleges and incorporates by reference all matters previously set forth
7 herein.

8 105. At all times relevant hereto, APD has been and still is the holder of the exclusive
9 rights under the Copyright Act of 1976 (17 USC §§ 101 et seq. (“Copyright Act”), and all
10 amendments thereto) to reproduce, distribute or license the reproduction and distribution of the
11 Aww So Cute Print and the APD Product and Model Images.

12 106. The Aww So Cute Print and APD Product and Model Images are original works
13 created by APD, copyrightable under the Copyright Act.

14 107. An registration for APD’s Copyrights in the Aww So Cute Print has been duly
15 granted by the United States Copyright Office; all applicable formalities and notice requirements
16 under the Copyright Act have been duly complied with; and APD has thereby secured and now
17 owns the exclusive right and privilege to enforce its rights in such Copyright.

18 108. An application for registration of APD Product and Model Images copyright has
19 been duly filed in the United States Copyright Office; all applicable formalities and notice
20 requirements under the Copyright Act have been duly complied with; and APD has thereby
21 secured and now owns the exclusive right and privilege to enforce its rights in such Copyright.

22 109. APD is informed and believes and thereupon alleges that Defendants, and each of
23 them, acquired possession of adult printed diapers bearing the Aww So Cute Print, and have
24 distributed the same for sale and/or use in the United States and elsewhere.

25 110. APD is informed and believes and thereupon alleges that Defendants, and each of
26 them, acquired possession of electronic files representing the APD Product and Model Images,
and have distributed the same in the United States and elsewhere.

1 111. Defendants and each of them have infringed APD's exclusive rights in the Aww
2 So Cute Print and the APD Product and Model Images by displaying the same and/or by
3 distributing, advertising, selling, and/or offering for sale products bearing the Aww So Cute
4 Print without authorization by APD or its predecessors in interest.

5 112. Each infringing sale of products bearing the Aww So Cute Print and the APD
6 Product and Model Images, as well as the threat of continuing the same, constitutes a separate
7 claim against each of the Defendants under the Copyright Act. APD has sustained, and will
8 continue to sustain, substantial damages to the value of the Aww So Cute Print and APD
9 Product and Model Images in that the previously described activities of each of the Defendants
10 have directly diminished and will continue to diminish the revenue that APD would otherwise
11 receive.

12 113. Defendants and each of them have realized unlawful and unjust profits from the
13 unauthorized and illegal distribution and use of the Aww So Cute Print and APD Product and
14 Model Images. As such, APD is entitled to disgorgement of each of the Defendants' profits
15 directly and indirectly attributable to each of the Defendants' infringement of the Aww So Cute
16 Print and APD Product and Model Images an amount to be established at trial.

17 114. Defendants and each of them have committed all of the aforesaid acts of
18 infringement deliberately, willfully, intentionally, maliciously, and oppressively, without regard
19 to APD's proprietary rights.

20 115. APD is informed and believes and thereupon alleges that Defendants, and each of
21 them, have acted with knowledge and/or reckless disregard of APD's rights such that their acts
22 of copyright infringement as alleged above were, and continue to be, willful, intentional and
23 malicious, subjecting Defendants, and each of them, to liability therefore. Further, Defendants,
24 and each of them, willfully and intentionally misappropriated, palmed-off and/or infringed
25 APD's Aww So Cute Print and APD Product and Model Images which renders Defendants, and
26 each of them liable for damages as described herein.

1
2 **COUNT V – Tortious Interference With Prospective Economic Advantage**
3 **(Against All Defendants)**

4 116. Plaintiff hereby incorporates all previous paragraphs.

5 117. Plaintiff had a prospective economic advantage from the prospective sale of its
6 branded products.

7 118. Defendants improperly interfered with Plaintiff’s prospective advantage by
8 misappropriating Plaintiff’s intellectual property and reducing Plaintiff’s sale of its branded
9 products.

10 119. Defendants’ conduct was intentional.

11 120. As a result of Defendants’ conduct, Plaintiff suffered pecuniary loss and will incur
12 expenses pursuing these claims.

13 121. Defendants and each of them have realized unlawful and unjust profits from the
14 unauthorized and use of the AWW SO CUTE Mark. As such, APD is entitled to disgorgement
15 of each of the Defendants’ profits directly and indirectly attributable to each of the Defendants’
16 infringement of the AWW SO CUTE Mark an amount to be established at trial.

17 122. Defendants and each of them have committed all of the aforesaid acts of
18 infringement deliberately, willfully, intentionally, maliciously, and oppressively, without regard
19 to APD’s proprietary rights.

20 123. APD is informed and believes and thereupon alleges that Defendants, and each of
21 them, have acted with knowledge and/or reckless disregard of APD’s rights such that their acts
22 of copyright infringement as alleged above were, and continue to be, willful, intentional and
23 malicious, subjecting Defendants, and each of them, to liability therefore. Further, Defendants,
24 and each of them, willfully and intentionally misappropriated, palmed-off and/or infringed
25 AWW SO CUTE Mark which renders Defendants, and each of them liable for damages as
26 described herein.

1
2 **COUNT VI – Conversion**

3 124. Plaintiff hereby incorporates all previous paragraphs.

4 125. Plaintiff had substantial value in its intellectual property.

5 126. Defendants improperly converted Plaintiff’s intellectual property for their own use
6 and exercised unauthorized and wrongful dominion or control over Plaintiff’s intellectual
7 property.

8 127. As a result of Defendants’ conduct, Plaintiff was deprived of full control over its
9 intellectual property and the value derived therefrom.

10 128. As a result of Defendants’ conduct, Plaintiff suffered pecuniary loss and will incur
11 expenses pursuing these claims.

12 129. Defendants and each of them have realized unlawful and unjust profits from the
13 unauthorized and use of the AWW SO CUTE Mark. As such, APD is entitled to disgorgement
14 of each of the Defendants’ profits directly and indirectly attributable to each of the Defendants’
15 infringement of the AWW SO CUTE Mark an amount to be established at trial.

16 130. Defendants and each of them have committed all of the aforesaid acts of
17 infringement deliberately, willfully, intentionally, maliciously, and oppressively, without regard
18 to APD’s proprietary rights.

19 131. APD is informed and believes and thereupon alleges that Defendants, and each of
20 them, have acted with knowledge and/or reckless disregard of APD’s rights such that their acts
21 of copyright infringement as alleged above were, and continue to be, willful, intentional and
22 malicious, subjecting Defendants, and each of them, to liability therefore. Further, Defendants,
23 and each of them, willfully and intentionally misappropriated, palmed-off and/or infringed
24 AWW SO CUTE Mark which renders Defendants, and each of them liable for damages as
25 described herein.

26 **COUNT VII – Unjust Enrichment**

(Against All Defendants)

1 132. Plaintiff hereby incorporates all previous paragraphs.

2 133. On information and belief, Defendants wrongfully used Plaintiff's intellectual
3 property for their own gain without Plaintiff's authorization.

4 134. Plaintiff's intellectual property had substantial value.

5 135. On information and belief, Defendants were enriched by the unauthorized use of
6 Plaintiff's intellectual property.

7 136. Plaintiff was impoverished by Defendant's conduct including without limitation
8 suffering pecuniary loss and incurring expenses pursuing these claims.

9 137. Defendants and each of them have realized unlawful and unjust profits from the
10 unauthorized and use of the AWW SO CUTE Mark. As such, APD is entitled to disgorgement
11 of each of the Defendants' profits directly and indirectly attributable to each of the Defendants'
12 infringement of the AWW SO CUTE Mark an amount to be established at trial.

13 138. Defendants and each of them have committed all of the aforesaid acts of
14 infringement deliberately, willfully, intentionally, maliciously, and oppressively, without regard
15 to APD's proprietary rights.

16 139. APD is informed and believes and thereupon alleges that Defendants, and each of
17 them, have acted with knowledge and/or reckless disregard of APD's rights such that their acts
18 of copyright infringement as alleged above were, and continue to be, willful, intentional and
19 malicious, subjecting Defendants, and each of them, to liability therefore. Further, Defendants,
20 and each of them, willfully and intentionally misappropriated, palmed-off and/or infringed
21 AWW SO CUTE Mark which renders Defendants, and each of them liable for damages as
22 described herein.

23
24
25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiff demands judgment against Defendants, and each of them, as follows:

- 1 1. Judgment in favor of APD and against Defendants as to each of the above Counts.
- 2 2. That APD be granted injunctive relief under 15 U.S.C. § 1051 *et seq.* that Defendants and
3 all of their respective officers, agents, servants, representatives, employees, attorneys, and
4 all other persons acting in concert with them be enjoined from:
 - 5 a. Using the AWW SO CUTE Mark, or any mark confusingly similar to the AWW
6 SO CUTE Mark, in connection with the marketing, promotion, advertising, sale,
7 or distribution of any foreign language software products or services;
 - 8 b. Directly or indirectly engaging in false advertising or promotions of APD's
9 products;
 - 10 c. Making or inducing others to make any false, misleading or deceptive statement of
11 fact, or representation of fact in connection with the promotion, advertisement,
12 packaging, display, sale, offering for sale, manufacture, production, circulation or
13 distribution of APD's products by making false representations regarding APD's
14 products.
- 15 3. Defendants pay damages incurred by APD as a result of the trademark infringement, false
16 designation of origin, false endorsement, false advertising, and deceptive practices,
17 including, but not limited to, in the case of Defendants' violation of 15 U.S.C. § 1125(a),
18 treble damages and attorney's fees, in an amount to be proven at trial, and in any case
19 exceeding the jurisdictional threshold of diversity jurisdiction.
- 20 4. An accounting be ordered to determine the profits realized by Defendants due to the
21 unauthorized use of the AWW SO CUTE Mark and Defendants' other infringing
22 activities in the operation of their businesses;
- 23 5. Defendants be required to deliver up to APD all goods, signs, packaging, literature,
24 advertising, and other materials bearing the AWW SO CUTE Mark or any confusingly
25 similar name or mark, or colorable imitation thereof, used in connection with the
26 Defendants' businesses;

- 1 6. For an order authorizing the United States Marshal, Plaintiff's authorized agents, the state
2 and local police, and/or any persons working under their supervision, to seize and
3 impound any and all computer discs, drives, servers, hardware or software containing or
4 allowing unlawful access to any products containing the Aww So Cute Prints;
- 5 7. Defendants be required to remove all AWW SO CUTE trademarks and any other
6 elements likely to cause confusion with APD's website from Defendants' websites, URL,
7 HTML code, search engine query terms, search engine advertising keywords, and any
8 other electronic communications hosts, links, and devices;
- 9 8. Defendants be ordered to pay costs of this action, including attorney's fees incurred by
10 APD in connection with Defendants' infringement; and
- 11 9. Such other and further relief as this Court deems just and proper.

12 **DATED** this 1 day of February, 2018.

13
14 **J. Clark Law Firm, PLLC**

15 By: /s/Justin Clark/s/
16 Justin M. Clark
17 40 North Central Avenue, Suite 1400
18 Phoenix, AZ 85004
19 *Attorney for Plaintiff*
20
21
22
23
24
25
26