

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

**CODENAME ENTERPRISES, INC. (d.b.a.  
BUZZR),**

*Plaintiff,*

vs.

**FREMANTLEMEDIA NORTH  
AMERICA, INC.,**

*Defendant.*

---

Civil Action:

JURY TRIAL DEMANDED

---

**COMPLAINT**

---

Plaintiff Codename Enterprises, Inc., doing business as the social and website publishing company “Buzzr” and holder of two federally registered trademarks for BUZZR (U.S. Registration Nos. 4865678 and 3890887), for its complaint against defendant FremantleMedia North America (“Fremantle”), by and through its attorneys Archer & Greiner, a Professional Corporation, complains and alleges as follows:

**INTRODUCTION**

1. This is a claim for willful trademark infringement by the North American division of one the largest television production companies in the world, FremantleMedia North America, of plaintiff’s multiple registered trademarks for Internet and social media related uses of the word BUZZR, which plaintiff has used for the social website publishing business it has conducted under the name “Buzzr” since 2009 (the “BUZZR Trademark”).

2. Buzzr's social website publishing business involves both the publication and discovery of websites and web content across digital channels, especially the Internet, on social media and mobile platforms.

3. Since 2009, Plaintiff has publicly done business as "Buzzr", launching its website Buzzr.com on April 13, 2009 and debuting its first products on May 2, 2009, including free websites for the public.

4. Defendant, together with its parent company Fremantle Limited, produces some of the most successful television shows and owns some of the most valuable corresponding entertainment brands and trademarks on earth. These include the "American Idol" program and variants of the IDOL trademark in some 150 countries around the world; the "The X-Factor" and variants of THE X-FACTOR trademark in dozens of countries around the world; "America's Got Talent" and variants of the GOT TALENT trademark in dozens of countries around the world; "Family Feud" and variants of the FAMILY FEUD trademark in dozens of countries around the world; "The Price is Right" and variants of the THE PRICE IS RIGHT trademark in dozens of countries around the world; and "Let's Make a Deal" and variants of the LET'S MAKE A DEAL trademark.

5. Defendant's 2014 estimated revenue was \$1.65 billion, and it is a division of European broadcast giant RTL Group, whose 2014 revenue was \$5.8 billion.

6. Utilizing its vast multimedia and financial leverage, defendant did, notwithstanding its knowledge of Buzzr's preexisting business, trademark and registrations, establish and promote multiple infringing entities wrongfully utilizing plaintiff's BUZZR trademark and cross-promoting one another, including, but not limited to, the following infringing uses:

- a. a “Buzzr” digital broadcast television network featuring entertainment programming carried on at least 31 stations around the United States including 17 stations owned and operated by Fox Television Stations Group, Inc.;
- b. a “Buzzr” channel on YouTube.com featuring hundreds of episodes of broadcast-quality original programming, distributed on a social network in a video blogging format;
- c. a website published by Fremantle at the URL “buzzrgames.com” featuring a regularly updated video blog;
- d. a website published by Fremantle at the URL “buzzrplay.com”, promoted under the brand name BUZZR;
- e. a Twitter micro-blog published by Fremantle under the name @buzzrgames promoted under the brand name BUZZR, featuring text and video micro-blogging content;
- f. another Twitter micro-blog published by Fremantle under the name @buzzrplay, promoted under the brand name BUZZR, featuring text and video micro-blogging content distributed on a social publishing network;
- g. a Facebook page published by Fremantle and promoted under the brand name BUZZR, featuring text and video blogging content;
- h. a second Facebook page account published by Fremantle and promoted under the brand name BUZZR, featuring text and video blogging content;
- i. a website published by Fremantle at <http://buzzrgames.tumblr.com/>, part of the Tumblr blogging network and social network owned and operated

by Yahoo! Inc., promoted under the brand name BUZZR, and featuring text and video blogging content;

j. an Instagram channel published by Fremantle, under the brand name BUZZR featuring photo and video blogging content distributed on a social publishing network; and

k. a second Instagram channel published by Fremantle, promoted under the brand name BUZZR featuring photo and video blogging content distributed on a social network.

7. Upon information and belief, defendant FremantleMedia is reaping substantial revenue from the tens of millions of views of its original programming on its advertiser-sponsored BUZZR YouTube channel.

8. Plaintiff has repeatedly demanded that defendant cease its infringing conduct, formally placing defendant on notice not only of plaintiff's rights in the BUZZR Trademark but of the specific commercial damage being caused by defendant's conduct

9. Not only has defendant consistently refused to alter its conduct whatsoever in response to these communications, but it has proceeded with to file no fewer than nine applications to register variants of BUZZR as a trademark, all of which, except for one not yet published for opposition, plaintiff has opposed.

10. The acts of the defendant have infringed, tarnished and diluted plaintiff's rights in the BUZZR Trademark and constitute reverse confusion as well; if not enjoined by this Court, will continue to do so.

11. Moreover, defendant's conduct is acting as, and if not stopped will continue to act as, a commercial, branding and legal roadblock to all conceivable and foreseeable expansions of plaintiff's business utilizing its BUZZR Trademark.

12. Plaintiff brings this action to vindicate and enforce its rights in the BUZZR Trademark and under other applicable law with respect to defendant's conduct, to seek compensation for the injuries it has sustained as a result of that conduct, and for such other relief as the law and equity provide, as set forth in detail herein.

### **THE PARTIES**

13. Plaintiff Codename Enterprises, Inc., doing business as BUZZR, is a corporation of the state of Delaware-incorporated registered to do business in the State of New York with its principal place of business at 111 West 67<sup>th</sup> Street, New York, New York.

14. FremantleMedia North America has its headquarters at 2900 West Alameda Avenue, Burbank, California and does business in New York at 435 Hudson Street, New York, New York. It is a wholly-owned subsidiary of FremantleMedia Limited, located at 1 Stephen Street, London, United Kingdom which in turn is a division of RTL Group, located at 45, Boulevard Pierre Frieden, L-1543 Luxembourg.

### **JURISDICTION AND VENUE**

15. This action arises out of New York common law and the Trademark Act of July 5, 1946, as amended (15 U.S.C. §1051 et. seq. (the "Lanham Act")). The Court has original subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 (a) and pursuant to 28 U.S.C. §1331 and 1338. The Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367(a) over claims arising under New York law because all of the claims herein arise out of a common nucleus of facts. The Court also has diversity jurisdiction over this action pursuant to 28 U.S.C.

§1332(a)(2) because defendant Fremantle is a corporate citizen of the state of California or, in the alternative, is a wholly-owned subsidiary of a corporation of a foreign state, and the matter in controversy exceeds the sum of \$75,000 exclusive of interests or costs.

16. The Court has personal jurisdiction over defendant on the ground of general jurisdiction because defendant maintains a continuous presence within the State of New York, including a substantial business office, and is conducting business in New York. The Court also has personal jurisdiction over defendant on the ground of specific jurisdiction because it distributes the infringing services, and has caused and continues to cause harm to defendant, in this District.

17. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b) and (c) because Fremantle is subject to personal jurisdiction in this district and a substantial part of the events giving rise to Plaintiff's claims, including Fremantle's infringing acts, occurred in the district.

## **ALLEGATIONS**

### **A. BUZZR'S BUSINESS**

18. Buzzr's offerings include website publishing software, blogging tools, a social network, content discovery tools for consumers, social sharing tools and an Internet advertising platform. More than 100,000 websites have been built with the help of Plaintiff's software, including its distribution of free open source tools meant to increase loyalty and brand awareness.

19. Buzzr's founding team consisted of a team of highly experienced Internet professionals, each of whom had previously participated in building famous brands with tens of millions of dollars in revenue. Their goal is to make Buzzr a mass-market, consumer social media publishing brand.

20. The creation of Buzzr's original product suite was a huge conceptual and technical undertaking. Buzzr's founding team spent approximately one year developing its products prior to launch in an effort involving more than a dozen professional developers, designers, strategists and marketers.

21. Upon its launch, Plaintiff's Buzzr.com publishing platform received hundreds of favorable reviews and social media mentions among industry observers and media outlets, establishing a reputation for quality and innovation and quickly attracting a merger offer from one of the most sophisticated and highly-regarded technology companies in the world, which Buzzr chose not to entertain at that time.

22. Buzzr is also a social and content discovery platform, linking its websites, blogs and users together in a manner similar to Tumblr.com, a popular blogging platform and content management system that Yahoo! acquired for \$1.1 billion in 2013. Like Buzzr, Tumblr offers free sub-websites where publishers, mostly consisting of individuals, can post and share content.

23. One reason for the high valuation of social publishing platforms such as Tumblr and Buzzr is their anticipated convergence into content-rich and revenue-generating world of entertainment, spanning the range from music downloads to celebrity news to social publishing that "sits above" and includes content about game shows, a highly lucrative category.

24. This convergence was built into both Buzzr's strategy and its technology, and can be seen in action through the progress of its competitor, Tumblr, which is further along on the development curve than Buzzr.

25. Tumblr typified the convergence referred to above, for example, by encouraging its publishers to post and share a wide range of media on its platform, including on websites

featuring extensive video content from various entertainment companies, as well as providing technological resources that facilitate such sharing.

26. One such Tumblr publisher is defendant Fremantle, which uses Tumblr as a means of both promotion and distribution for many of its television properties, including its infringing BUZZR-brand at <http://buzzrgames.tumblr.com/>.

27. In this way, Tumblr has become a third-party video and media destination in and of itself, leveraging the content of its users to metamorphose into a media entity of significance, influence and value.

28. Tumblr's transformation is one way in which technology companies that provide online publishing tools to the public are converging with the world of branded entertainment. Other examples in the competitive set of social publishing include Wordpress.com (a brand of Automatic Inc.), Medium, YouTube, Twitter, Instagram, and Pinterest. All of these companies provide only the technology to their millions of individual publishers (such as defendant), who use that technology to upload "user generated content," including about entertainment and games shows.

29. Because today's youthful audiences spend far more time on digital platforms than watching television, media companies distribute huge volumes of original content on digital social publishing platforms. The value of defendant's infringing "Buzzr"-branded digital properties is substantial. Defendant offers users access to its entertainment content on YouTube, Twitter, Facebook, Instagram, Tumblr and other platforms similar or largely identical to Buzzr in their social publishing and content discovery platform model.



**B. BUZZR'S INNOVATIVE PLATFORM FOR TECHNOLOGICAL, PLATFORM AND MULTIMEDIA CONVERGANCE**

30. Investment in new and improved products and services has continued without abatement since Buzzr's launch. Buzzr has invested approximately \$3 million in development of the company's products and service, accounting for cash plus the value of staff time. After almost a year of planning and development, and a two-month beta period on Buzzr.org, a redesigned Buzzr.com featuring important new technology debuted in January of 2016.

31. Buzzr has already built, at great expense, publishing and social sharing technology that is comparable to that utilized by other famous social publishing and content discovery platforms such as Tumblr, though Buzzr's team and investors believe that, if not prevented by defendant's wrongful competition and given the opportunity to demonstrate the strengths of its innovative technologies, Buzzr will do it even better.

32. Buzzr's intention has long been, well before defendant began its infringing acts, to continue to expand the networking and content discovery capabilities offered to consumers and website builders to compete with popular social media publishers platforms, part of which is demonstrated by the backgrounds and experiences of its founding team.

33. Plaintiff's co-founder and original CEO Ed Sussman, for example, is an experienced media executive and at one time even worked as a managing director for a digital division of media giant Bertelsmann, the same company that owns 75% of RTL Group, defendant's parent. As the president of Mansueto Digital, Sussman launched and ran "Fast Company TV," an online video channel featuring original video programming consisting of several shows produced by well-known technology journalist Robert Scoble. Fast Company TV was covered widely by the media. An early innovator in social media sharing platform, in 2007

Sussman successfully transformed FastCompany.com into a hybrid professional/user generated content platform.

34. Buzzr's capabilities as a networking and content discovery platform is fundamental to its underlying technical architecture, going back to 2008. The Buzzr.com platform was built so that all "websites" created with it are actually sub-sites (e.g. "nameofwebsite".buzzr.com) of the same massive website, residing at Buzzr.com for the consumer edition (and other URLs on private-label editions for white-label business clients.)

35. Because all the sub-sites are essentially just "pages" of one giant website, user log in credentials and profiles operate across the entire Buzzr platform, regardless of what kind of functionality the user calls upon.

36. Buzzr's technology enables network search across all sub-sites, allowing visitors to any sub-site to search and discover content on all other sites using a Buzzr-branded search tool. The branded tool is on all Buzzr.com sub-sites and is featured prominently on the central Buzzr.com site. Buzzr's evolving technology will also allow visitors to a sub-site to "join" that site, in much the same way visitors to social networks can "follow" a blog or page. This will allow content from different sub-sites to "flow" among users.

37. Buzzr's technical architecture thus follows generally-accepted practices of all major social publishing and content discovery platform platforms, such as Tumblr, Twitter and Facebook. It overlaps with traditional website builders because the sub-site owners have the option to request that top-level domain (e.g. website.com) mask the sub-domain (e.g. website.buzzr.com). The underlying social network construction remains the same even if the sub-site domain is masked.

38. Buzzr's offerings, therefore, have from Buzzr's inception not only aspired to such articulation, but have always been entirely premised on them.

39. One specific example of this is the "Buzzr+ City Guide," a consumer website consisting of searchable business profiles that can be maintained by business owners and tied to a website on the regular Buzzr platform which Buzzr began developing in early 2012.

40. The Buzzr+ City Guide is meant as an alternative to Yelp that gives business owners in greater control of their online profiles, and has already been presented to several major media companies as possible partners. Detailed designs, financial models and marketing strategy has been planned. The project remains, absent defendant's interference, a viable option for Buzzr's short-term expansion.

**C. BUZZR'S NAME CHOICE, BRANDING STRATEGY AND DILIGENCE IN PROTECTING ITS TRADEMARK RIGHTS**

41. Buzzr has done business under the name and trademark "BUZZR" since April of 2009, holding itself out as "Buzzr" in offering its services, operating a website at Buzzr.com since April 13, 2009 as well as maintaining an active Twitter account with the name @Buzzr, maintaining a Facebook page utilizing its BUZZR name and mark as well as undertaking other promotional activities.

42. Plaintiff engaged in weeks of professional exercises to arrive at the brand name "Buzzr." This included multiple sessions with branding experts, led in-house by the leading alumni of the well-known web consultancy Razorfish, to identify key brand characteristics and associated sounds and words. Hundreds of variations were considered and modified to create wholly original new words, with the management team eventually deciding on "Buzzr." Brand characteristics were further emphasized with the choice of the design of the Buzzr logo.

43. Buzzr has widely promoted the BUZZR Trademark over six years, including by use of online display and text advertising on Google; advertising on other websites; a Twitter micro-blog with the account @buzzr; Twitter paid advertising; a Facebook page; Facebook paid advertising; sponsorship of conferences; marketing paraphernalia including thousands of buttons, stickers and temporary tattoos; its own blog at Buzzr.com; extensive PR efforts resulting in product reviews, news articles, blog posts, and video segments about BUZZR-branded products and services.

44. This BUZZR-brand marketing has resulted in many millions of viewer impressions on the Buzzr.com website over the past six years.

45. Starting in 2009, Buzzr has registered every major domain name associated with BUZZR, including Buzzr.com, Buzzr.net, Buzzr.org, Buzzr.info and many others.

46. Since 2009, Buzzr has continuously, without interruption, offered, sold, created and maintained either free or paid websites, networked with social tools, and paid enterprise versions of the Buzzr platform, including to small businesses, individuals, non-profits, educational institutions, website designers and website resellers.

47. The content of websites created using the Buzzr-branded platform is up to individual publishers, and includes entertainment, politics, medicine, history, business, technology and many other topics. Buzzr also creates websites in order to attract more attention to the platform and its content.

48. As set forth above, every website created on Buzzr.com reinforces the BUZZR trademark, because each one is ultimately a “page” at the Buzzr.com website and has a URL ending in /buzzr.com. All current publishers on plaintiff’s free Buzzr.com platform must use and, by such use, promote the BUZZR Trademark as part of their brand identity.

49. Besides the parent website with child sub-sites created by independent publishers, Buzzr's BUZZR-branded products and services include a drag and drop website builder; a social network linking users, websites and external social media; content discovery tools; blogging and micro-blogging tools, including for publishing video; a platform for providing various types of advertising; and numerous "white label" B2B platforms allowing other vendors to offer these services under their own brand or as a co-branded service with Buzzr.

50. Plaintiff has also reserved BUZZR! (with an exclamation point) for a downloadable mobile app on the Apple Store and intends to launch such an app with similar products and services offered on Buzzr.com, but specialized for mobile usage.

51. On June 23, 2009, Buzzr applied to register the BUZZR Trademark as stylized word mark in connection with its social website publishing services in international classes ("IC") 043, 009 and 005, based on a date of first use of April 19, 2009.

52. The description of goods and services for the BUZZR Trademark under IC 043 includes, "Providing an online website for creating and hosting micro websites for businesses, non-profits, bloggers, hobbyists, publishers and others."

53. The description of goods and services for the BUZZR Trademark under IC 009 includes, "Software for creating and managing web sites, creating, publishing, managing and organizing content for use on the Internet or an intranet."

54. The description of goods and services for the BUZZR Trademark under IC 035 includes, "Providing a website for connecting sellers with buyers, including via connections between buyers on different websites on a common network, and buyers connected to the seller via external online social networks and social media websites; Providing advertising service to distribute advertisements for display on Internet, namely, in websites, social conversations over

the Internet, emails, microblogs, blogs, electronic messages, instant messages, text messages, multimedia messages, social networks, status updates, forums, electronic bulletin boards.”

55. Buzzr’s registration of the BUZZR Trademark as a stylized word mark was published for opposition on December 15, 2009 and was registered as U.S. Registration No. 3890887 on December 14, 2010.

56. On January 22, 2015, Buzzr applied for a standard character mark registration for the BUZZR Trademark utilizing the same goods and services descriptions and classifications as U.S. Registration 3890887, also based on a date of first use of April 13, 2009.

57. The PTO published that registration for opposition on September 22, 2015 and awarded Buzzr U.S. Registration No. 4865678 for the standard character mark BUZZR on December 8, 2015.

58. Plaintiff has vigorously defended the BUZZR Trademark, challenging seven infringing entities with demands, which in each case resulted the recipient ending its infringing conduct, including by taking down websites and mobile applications from the market.

**D. DEFENDANTS’ WILLFUL INFRINGEMENT OF BUZZR’S TRADEMARK AND MISAPPROPRIATION OF BUZZR’S SOCIAL MEDIA IDENTITY AND ANTICIPATED DESTRUCTION OF ITS MULTIMEDIA PLATFORM**

59. On March 9, 2015 – three months prior to the launch of defendant’s infringing “Buzzr” television network and well in advance of defendant’s launch of its many infringing websites, Twitter micro-blogs, Facebook pages, Tumblr websites, and the Instagram photo/video blogs it brands with the BUZZR Trademark – plaintiff transmitted a demand the defendant immediately cease and desist its infringement.

60. Buzz’s demand was acknowledged in writing by defendant’s counsel on March 18, 2015, along with a refusal to comply.

61. Buzzr sent defendant a second Cease and Desist letter on April 15, 2015, specifically outlining how defendant's activities were interfering with Buzzr's longstanding plans for use of the BUZZR Trademark and of the damage, both past, present and prospective, being caused by defendant's infringement.

62. This letter, too, was acknowledged by defendant's counsel on April 23, 2015, which reiterated defendant's refusal to comply.

63. Plaintiff nonetheless followed up with a series of e-mails to defendant's counsel setting out multiple examples of actual confusion already occurring in a wide variety of platforms and contexts.

64. Defendant's counsel downplayed the significance of this confusion, refusing, again, to cease its infringement.

65. On May 1, 2015, one month before the scheduled launch of their broadcast television network, Buzzr e-mailed defendant once again, urging that it rename its digital and television entertainment business and cease and desist from infringement of plaintiff's BUZZR mark.

66. Defendant again declined to cease its infringement.

67. Meanwhile, defendant began filing applications to register BUZZR as its own trademark with the PTO. Between November 12, 2014 and June 4, 2015, defendant filed applications to register (1) BUZZR; (2) BUZZR TV; (3) BUZZR LET'S PLAY as trademarks.

68. Buzzr, in turn, has filed Notices of Opposition in connection with these applications, filing, to date, seven oppositions to defendant's proposed registration of variants of the BUZZR Trademark, all of which are likely to be confused with the BUZZR Trademark.

69. Defendant has also widely adopted and heavily promoted, including by prominently featuring it on the sets of defendant's Internet game shows, the use of the Twitter convention “#” or “hashtag” in front of the BUZZR Trademark.

70. Use of a hashtag on Twitter is an indexing convention for promoting or connecting discussion of specific subjects on Twitter. For example, #buzzr might be followed by a user wishing to receive updates about plaintiff's business.

71. Buzzr and its followers and users have utilized the #buzzr hashtag on Twitter since at least 2010.

72. Since the onset of defendant's program of mass infringement of the BUZZR Trademark, however, the #buzzr hashtag has been “tweeted” many thousands of times in relation to defendant's business.

73. As a result, Buzzr's ability to make effective use of the #buzzr hashtag to promote its business and marks has been severely hamstrung, because any person following “#buzzr” will be overwhelmed with “tweets” about defendant's game shows and other content unrelated to plaintiff and its services.

74. Upon information and belief, in late 2014, defendant stepped up its unfair competition by taking action to caused YouTube to remove Buzzr's YouTube channel, “BuzzrWebsites” – which had been in operation since 2011 – in order to direct traffic to defendant's infringing ”buzzr”-branded YouTube channel.

75. On June 1, 2015, defendant began the operation of its “Buzzr” television network, using the BUZZR Trademark.

76. The significance of defendant's “Buzzr” television network to the destruction of plaintiff's trademark rights and indeed potentially its entire business cannot be overstated



because of the extraordinary programming attractiveness of defendant's offerings. According to defendant's website, it is the owner of the largest game show library in the world. And, in fact, its "Buzzr" television network features broadcasts from its library of 154 game shows, with 40,000 episodes of well-known television shows such as "Let's Make a Deal", "To Tell the Truth", "Password", "What's My Line" and "Family Feud."

77. Defendant's former CEO Thom Beers was quoted in television trade publications in 2015 as saying "Launching BUZZR TV and growing its footprint is one of the top priorities for the business this year."

78. Fremantle has also launched three websites that infringe on the BUZZR Trademark: a) the URL <http://buzzrgames.com>, under the brand name BUZZR, to broadcast original videos in a blogging format (on or about March of 2015); b) the URL <http://buzzrplay.com>, under the brand name "Buzzr" (on or about June 1, 2015) ; c) the URL <http://buzzrgames.tumblr.com/>, under the brand name "Buzzr," to broadcast original videos and text in a blogging format, distributed by means of the social network and blogging platform Tumblr.

79. Defendant's infringing "Buzzr"-branded website published on the Tumblr platform, with millions of members, is specifically part of a large social media publishing network with associated blogging and micro-blogging tools. All three of defendant's websites use theBUZZR Trademark to identify the sites to visitors, despite their more complicated URLs. Upon information and belief, all three websites may eventually be used for advertising services and distributed advertising.

80. Defendant has also launched two Twitter channels, two Facebook pages, and two Instagram channels, all infringing the BUZZR Trademark.

81. Upon information and belief, defendant even caused a Wikipedia page entitled “Buzzr” to be created which referred to its television network and YouTube channel. As a result, this page has a top-three position when searching for the term BUZZR on Google and a large promotional box about defendant’s television network to the top right of the search results.

82. Upon information and belief, defendant is engaged in other advanced search engine optimization (“SEO”) practices to promote its infringing “Buzzr” – defendant’s social media, website promotion, public relations, SEO and celebrity-outreach campaigns – have succeeded in displacing Buzzr’s URL <http://Buzzr.com> from its six-year-long number-one search-result position for the search term “BUZZR,” which is the name of plaintiff’s business and its registered trademark. In fact, plaintiff’s website has moved from the number one search position to the middle of page two, eliminating 91% of plaintiff’s previous brand and discovery exposure on a Google search for its brand.

83. Additionally, 10 out of 10 of the first-page Google search results for the term BUZZR, results in Google searches now relate to defendant’s television network, YouTube channel, website and social media publishing channels.

84. Similarly, broadcast, print and online media coverage resulting from defendant’s infringing use of the BUZZR Trademark has been overwhelming. A Google search for “Buzzr” returns more than 200,000 results, overwhelmingly related to defendant’s use of the BUZZR Trademark. These include stories in every major media outlet, especially those focusing on the entertainment industry, as well as thousands of other smaller blogs and websites.

85. Defendant’s actions have not only resulted in a likelihood of confusion, actual confusion and reverse confusion, but in dilution of the BUZZR Trademark.

86. Defendant's digital strategy to maximize its revenue with its YouTube channel; its "Buzzr"-branded website at the URL buzzrgames.com; and its Twitter, Facebook and Instagram publishing accounts, is to appeal to the youth market. Indeed, almost all game show contestant are in their twenties or younger and many are social media stars with hundreds of thousands of followers.

87. In order to maximize of their goal of maximizing youth Internet traffic without concern for issues of taste or typical "commercial" sensibilities that are significant to plaintiff's business, Fremantle regularly creates salacious, sexually-themed programming on its YouTube "Buzzr"-branded channel.

88. For example, one video clip is entitled "Another word for slut – Password", a game involving contestants guessing the words "slut" and "hoe", with more than 4,510,114 views as of January 1, 2016.

89. Other examples include "masturbation" as "word of the day" on the "Family Feud" show; a contestant simulating masturbation as part of an answer to a game show contest; the use of obscenities as part of program clips; and semi-nudity. These and many other examples establish a pattern of identifying defendant's infringing "Buzzr" brand as one associated with sex, obscenity and crude sensibility.

**FIRST CAUSE OF ACTION**  
**Trademark Infringement**  
**15 U.S.C. §1114(1)**

90. Plaintiff repeats and realleges the allegations contained in prior paragraphs as if fully set forth herein.

91. Plaintiff's BUZZR Trademark is inherently distinctive.

92. Plaintiff's registrations for the BUZZR Trademark are in full force and effect, and the trademarks thereof and the goodwill of the business of plaintiff in connection with which its trademark is used has never been abandoned.

93. Plaintiff intends to continue to preserve and maintain its rights with respect to the its trademark registrations for the BUZZR Trademark.

94. Plaintiff's BUZZR Trademark and the goodwill associated therewith is of inestimable value to plaintiff.

95. Upon information and belief, defendant commenced the aforementioned activities with full knowledge of and by reason of the fact that the BUZZR Trademark is highly valuable.

96. Defendant's use of the BUZZR Trademark has been without the consent of the plaintiff.

97. The activities of defendant complained of herein constitute willful and intentional infringement of the BUZZR Trademark as protected by each of respective registrations set forth above. Defendant has acted in complete disregard of plaintiff's rights and in spite of defendant's knowledge that its unauthorized use of the BUZZR Trademark or any mark likely to be confused therewith or either of the forms of its mark as reflected in the respective registrations set forth above infringes plaintiff's rights.

98. Defendant's infringements of the BUZZR Trademark is likely to cause confusion and mistake in the minds of the purchasing public, and has done so.

99. Defendant's infringement of the BUZZR Trademark tends to and does falsely create the impression that the products and services sold by defendant are authorized, sponsored, or approved by plaintiff, and has done so.

100. Alternatively, or in addition to the foregoing, defendant's infringement of the BUZZR Trademark is likely to cause reverse confusion, tending to and falsely creating the impression that the products and services sold by plaintiff are either authorized, sponsored, or approved by plaintiff or the false impression that plaintiff is infringement on the rights of defendant; moreover, such reverse confusion has occurred.

101. Plaintiff is suffering irreparable harm and damage as a result of the acts of defendant as aforesaid in an amount thus far not determined and has no adequate remedy at law.

**SECOND CAUSE OF ACTION**  
**False Designation of Origin and False Description**  
**15 U.S.C. §1125(a)(1)(A)**

102. Plaintiff repeats and realleges the allegations contained in prior paragraphs as if fully set forth herein.

103. Upon information and belief, defendant has used in connection with the sale of its products and services, false designations of origin and false descriptions and representations, including symbols that tend falsely to describe or represent such its products and services.

104. Upon information and belief, defendant has caused the aforementioned its products and services to enter into commerce with full knowledge of the falsity of such designations of origin and such descriptions and representations, all to the detriment of plaintiff.

105. Defendant's use of the BUZZR Trademark constitutes the use of false designations of origin and false descriptions and representations tending falsely to describe or represent goods sold by defendant.

106. Upon information and belief, defendant has distributed, offered for sale or sold its products and services under one or more of each of the BUZZR Trademark with the express intent to cause confusion and mistake, to deceive and mislead the purchasing public, to trade

upon the reputation of plaintiff, and improperly to appropriate the valuable trademark rights of plaintiff.

107. Alternatively, or in addition to the foregoing, defendant's conduct causes reverse confusion, tending to and falsely creating the impression that the products and services sold by plaintiff are either authorized, sponsored, or approved by plaintiff or the false impression that plaintiff is infringement on the rights of defendant; moreover, such reverse confusion has occurred.

108. Plaintiff is suffering irreparable harm and damage as a result of the acts of defendant as aforesaid in an amount thus far not determined and has no adequate remedy at law.

**THIRD CAUSE OF ACTION**  
**False Advertising**  
**15 U.S.C. §1125(a)(1)(B)**

109. Plaintiff repeats and realleges the allegations contained in prior paragraphs as if fully set forth herein.

110. Upon information and belief, defendant has used in connection with the sale of its products and services, false designations of origin and false descriptions and representations, including symbols that tend falsely to describe or represent such its products and services and have caused such its products and services to enter into commerce with full knowledge of the falsity of such designations of origin and such descriptions and representations, all to the detriment of plaintiff.

111. Defendant's actions as aforesaid constitute commercial false descriptions and representations in commercial advertising and promotion tending falsely to describe or represent goods sold by defendant because defendant's products and services are not comparable in style, quality or otherwise with plaintiff's products and services.

112. Upon information and belief, defendant has made the false statements referred to above all with the express intent of causing confusion and mistake, deceiving and misleading the purchasing public, trading upon the reputation of plaintiff, and improperly appropriating the valuable trademark rights of plaintiff.

113. Plaintiff is suffering irreparable harm and damage as a result of the acts of defendant as aforesaid in an amount thus far not determined and has no adequate remedy at law.

**FOURTH CAUSE OF ACTION**  
**Common Law Trademark Dilution**

114. Plaintiff repeats and realleges the allegations contained in prior paragraphs as if fully set forth herein.

115. The use by defendant of the BUZZR Trademark in connection with its products and services has diluted, will and is likely to continue to dilute the distinctive quality of the BUZZR Trademark by tarnishing the BUZZR Trademark and the goodwill of the business associated with it.

116. The activities of defendant complained of herein constitute willful and intentional conduct intended to trade on plaintiff's reputation and to cause dilution of the BUZZR Trademark.

117. Plaintiff is suffering irreparable harm and damage as a result of the acts of defendant as aforesaid in an amount thus far not determined and has no adequate remedy at law.

**FIFTH CAUSE OF ACTION**  
**Common Law Unfair Competition**

118. Plaintiff repeats and realleges the allegations contained in prior paragraphs as if fully set forth herein.

119. Upon information and belief, defendant has intentionally and with bad faith appropriated the BUZZR Trademark with the intent of causing confusion, mistake, and deception

as to the source of its goods or to otherwise wrongfully benefit from the infringement of plaintiff's rights without due compensation.

120. Upon information belief, defendant has acted with the intent to palm off its goods as those of plaintiff, to place others in the position to palm off their goods as those of plaintiff, or to otherwise deceive the public. Such acts amount to trademark infringement, unfair competition and wrongful misappropriation under the common law.

121. Plaintiff is suffering irreparable harm and damage as a result of the acts of defendant as aforesaid in an amount thus far not determined and has no adequate remedy at law.

**SIXTH CAUSE OF ACTION**  
**New York Statutory Unfair Competition**  
**N.Y. Gen. Bus. Law §349 et seq.**

122. Plaintiff repeats and realleges the allegations contained in prior paragraphs as if fully set forth herein.

123. By reason of the aforesaid acts, defendant has engaged in false advertising and deceptive trade practices in the course of their business in violation of Section 349 et seq. of the New York General Business Law.

124. Plaintiff is suffering irreparable harm and damage as a result of the acts of defendant as aforesaid in an amount thus far not determined and has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREOF, plaintiff demands

I. That a preliminary and permanent injunction be issued enjoining defendant and its agents, servants, employees and attorneys and those persons in active concert or participation with them:



A. From using the BUZZR Trademark or any mark similar thereto in connection with the sale of any unauthorized goods or services or the rendering of any services;

B. From using any logo, trade name, or trademark that may be calculated to falsely represent or which has the effect of falsely representing that the goods or services of defendant or of third parties are sponsored by, authorized by or in any way associated with plaintiff;

C. From infringing the BUZZR Trademark;

D. From otherwise unfairly competing with plaintiff;

E. From falsely representing themselves as being connected with plaintiff or sponsored by or associated with plaintiff or engaging in any act which is likely to falsely cause the trade, retailers or members of the purchasing public to believe that defendant is associated with plaintiffs;

F. From falsely misrepresenting in commercial advertising or promotion the nature, characteristics and qualities of defendant's goods and services;

G. From using any reproduction, counterfeit, copy, or colorable imitation of the BUZZR Trademark in connection with the publicity, promotion, sale, or advertising of goods sold by defendant, including, without limitation, its products and services, social media offerings, or promotions, broadcasts or online communications utilizing a copy or colorable imitation of the BUZZR Trademark; and,

H. From affixing, applying, annexing, uttering, broadcasting, uploading, or using in connection with the sale of any goods, a false description or representation, including words or other symbols, tending falsely to describe or represent such goods as being those of plaintiff and from offering such goods in commerce.

II. That defendant be required, at plaintiff's election, either (i) to pay plaintiff statutory damages as provided for under 15 U.S.C. § 1117(c) or (ii) account to plaintiff for all profits resulting from defendant's infringing activities and that such award of profits to plaintiff be increased by the Court as provided for under 15 U.S.C. § 1117(b).

III. That plaintiff have a recovery from defendant of the costs of this action and plaintiff's reasonable counsel fees pursuant to 15 U.S.C. § 1117.

IV. That defendant be ordered to disseminate corrective advertising to dispel and correct the false, misleading and deceptive impressions created or caused by advertising for its infringing goods and services, or that plaintiff be awarded as damages an amount sufficient to prepare, publish or otherwise disseminate the same.

V. That defendant be ordered to deliver up to plaintiff for destruction all labels, stickers, signs, prints, packages, wrappers, receptacles, advertisements and other written or printed material in their possession, custody or control that bear the BUZZR Trademark, alone or in combination with any other words, marks or other elements.

VI. That plaintiff have all other and further relief as the Court may deem just and proper under the circumstances.

### **JURY DEMAND**

Plaintiff demands trial by jury on all issues amenable thereto.



Ronald D. Coleman (RC 3875)

**ARCHER & GREINER**

A Professional Corporation

44 Wall Street – Suite 1285

New York, NY 10005

212-292-4998

[rcoleman@archerlaw.com](mailto:rcoleman@archerlaw.com)

*Attorneys for Plaintiff Codename Enterprises,  
Inc.*

Date: February 18, 2016