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AMARETTO RANCH BREEDABLES, LLC

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 AMARETTO RANCH BREEDABLES, LLC, a
16 California Limited Liability Corporation

17 Plaintiff,

18 v.

19 OZIMALS, INC., an Alabama corporation;
20 CANDACE SARGENT, an individual

21 Defendants.

CASE No.: CV10-5696 CRB

**FIRST AMENDED COMPLAINT
FOR DECLARATORY
JUDGEMENT;
MISREPRESENTATION UNDER 17
U.S.C. § 512(f), TORTUOUS
INTERFERENCE WITH
PROSPECTIVE BUSINESS
ADVANTAGE, UNFAIR
COMPETITION UNDER BUS.&
PROF. CODE § 17200, AND MISUSE
OF COPYRIGHT, 17 U.S.C. § 102(B).
AND INJUNCTIVE RELEIF**

DEMAND FOR JURY

1 Plaintiff, Amaretto Ranch Breedables, LLC, a California limited liability company hereby
2 sues Ozimals, Inc., an Alabama company, and alleges as follows:

3 **JURISDICTION & VENUE**

4 1. This is a civil action seeking declaratory relief and damages and arises under the
5 copyright laws of the United States, 17 U.S.C. §§ 101, et seq. This Court has subject matter
6 jurisdiction under 28 U.S.C. §§ 1331, 1332, and 2201, and the Declaratory Judgment Act, 28 U.S.C.
7 § 2291.

8 2. This Court also has jurisdiction under the Digital Millennium Copyright Act
9 (“DMCA”) under 17 U.S.C. § 512(g)(3)(D) which provides that “jurisdiction of Federal District
10 Court for the judicial district in which the address of the [counter-notification subscriber] is located.”

11 3. This Court has supplemental jurisdiction of the state statutory and common law
12 claims under 28 U.S.C. §§ 1338(b) and 1367(a). This complaint asserts claims for federal
13 misrepresentation under 17 U.S.C. § 512(f); for violation of California statutes §§ 17200 et seq. and
14 the common law of California.

15 4. This Court has personal jurisdiction and venue is proper in this Court pursuant to 28
16 U.S.C. § 1391 since Defendants are, upon information and belief doing business in, and substantially
17 all conduct occurred within this District.

18 **INTRADISTRICT ASSIGNMENT**

19 5. Intradistrict assignment to the San Francisco Division is appropriate per Civil Local
20 Rule 3-2(c), as a substantial part of events which give rise to the claims alleges in this Complaint
21 occurred in San Francisco County.

22 **THE PARTIES**

23 6. Plaintiff, Amaretto Ranch Breedables, LLC (“Plaintiff” or “Amaretto”) is a California
24 Limited Liability Company with its principle place of business at 24570 Summerfield Drive, Moreno
25 Valley, California 92557.

26 7. Amaretto Ranch Breedables, LLC creates and sells animated, virtual, digital animals
27 and associated products in its virtual store in Second Life, a three dimensional virtual world created
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1 and operated by Linden Research, which has a principle place of business at of 945 Battery Street,
2 San Francisco, California 94111.

3 8. Plaintiff is informed and believes and thereon alleges that Defendant Ozimals, Inc. is
4 an Alabama company with an address of P.O. Box 1532, Pelham, Alabama 35124 and it sells digital
5 “bunnies” and associated products within Second Life.

6 9. Ms. Candace Sargent is an individual doing business in California. Plaintiff is
7 informed and believes that Ms. Sargent is a resident of Alabama and is the founder, owner, and
8 principal of Ozimals, Inc.

9 10. Plaintiffs are informed and believe, and on that basis allege, that at all times relevant
10 to this complaint, there has existed such a unity of interest and ownership between Ms. Sargent and
11 Ozimals, Inc. that any individuality and separateness between the two does not exist, and that for
12 purposes of the claims asserted in this counterclaim each of them is the alter ego of the other.
13 Plaintiffs are further informed and believe, and on that basis allege, that Ms. Sargent has dominated
14 and controlled and continues to dominate and control Ozimals’s organization and activities, that Ms.
15 Sargent and Ozimals have engaged and continue to engage together in the improper conduct alleged
16 in this case, and that Ms. Sargent has directed and controlled and continues to direct and control
17 Ozimals’s actions such that Ozimals is a mere shell, instrumentality, and/or conduit through which
18 Ms. Sargent has acted and continues to act. Under these circumstances, adherence to the fiction of
19 the separate existence of Ms. Sargent and Ozimals would permit an abuse of any privilege afforded
20 truly separate entities and would sanction fraud and promote injustice if the acts in question are
21 treated as those of one of the entities alone.

22 **SUMMARY OF FACTS AND ALLEGATIONS**

23 11. This is a civil action seeking declaratory and injunctive relief and damages following
24 misrepresentations by Ozimals, Inc. and Ms.Sargent (collectively, “Defendants”) to Linden
25 Research, Inc. (“Linden”) and others alleging that Defendants own copyrights in the concept and
26 functional characteristics of breedable virtual animals and that Amaretto is infringing Defendants’
27 purported copyrights. On November 4, 2010, Amaretto learned – by virtue of a cease and desist
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1 letter – that Defendants claimed Amaretto to be infringing Defendants’ purported copyrights in the
2 concept of and functions inherent in a “breedable” virtual pet, which is a software product created
3 and sold by both Amaretto and Defendants (and many others) in the virtual 3D environment that is
4 Second Life.

5 12. Despite being presented with facts and legal principles demonstrating that Defendants
6 could not have any of the valid copyrights they claimed, Defendants pressed their allegations in the
7 form of a “take-down” notice sent to Linden – the creators and controllers of Second Life – pursuant
8 to the DMCA. That notice, sent December 1, 2010, repeated Defendants’ claims of infringement
9 against Amaretto and required Linden to remove Amaretto’s products from Second Life or risk
10 incurring secondary liability for copyright infringement. Furthermore, Defendants continued to
11 disseminate their allegations of Amaretto’s alleged infringement to the public by, among other
12 things, posting those allegations on their website.

13 13. When Amaretto brought this action in an effort to keep its products available on
14 Second Life and to hold Defendants accountable for their misrepresentations, Defendants responded
15 by filing a copyright infringement action in federal court in Alabama and by issuing yet another
16 DMCA take-down notice to Linden making identical infringement allegations as in the first one.

17 14. The timing of Defendants’ actions was in no way coincidental. Rather, by
18 broadcasting false claims of infringement and invoking the DMCA without justification, Defendants
19 clearly intended to damage Amaretto’s product sales during the crucial holiday season and, at the
20 same time, to bolster the Defendants’ sales of their own, supposedly “legitimate” products. Despite
21 the injunctive relief Amaretto has received thus far, Defendants’ conduct has already caused and will
22 continue to cause irreparable harm to Amaretto’s business and reputation, and thus Amaretto seeks a
23 permanent injunction against Defendants as well as compensatory damages, punitive damages,
24 statutory damages, attorneys’ fees and costs, and any other relief this Court deems appropriate.

25 **STATEMENT OF FACTS**

26 **Background on Second Life**

27 15. Second Life is a virtual world platform developed and owned by Linden. Once a
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1 person establishes an account with Linden, they ca thereafter can “enter” that virtual world of
2 Second Life.

3 16. Within Second Life, the user can not only experience but can create three dimensional
4 environments, animated avatars and other various creatures and objects through the use of tools
5 provided by Linden for such use in Second Life. These include a three-dimensional modeling tool
6 based around geometric shapes that allows users to build virtual objects and, most importantly, the
7 Linden Scripting Language (“LSL”). LSL is essential the universal coding language for Second
8 Life, since it is the only means of adding functionality to virtual objects , and its copyrights are
9 owned by Linden.

10 17. All objects and scripts, when created, have “permissions” that can be set for them.
11 The permissions available are “modify, copy, transfer and move.” If “modify” is enabled, the owner
12 of the object can edit its properties, like item name or object scale. “Modify” permissions also grant
13 the ability to delete an object. If “copy” is enabled, the owner can make as many copies as needed of
14 the original item. Copies maintain creator information, and can never be more permissive than the
15 item being copied. If “transfer” is enabled, the owner can transfer the item to another user. If an
16 item is not transferable, the new owner cannot sell, give away, release, or embed in an object
17 something they sell, give away, or release. The “transfer” permission only applies to the owner,
18 since no one else can initiate a transfer. If “move” is enabled, the object can be moved. The
19 permissions track four primary categories for each object – 1) owner, 2) group, 3) everyone else, and
20 4) next owner. Each category has its own set of permissions. It is through the use of these
21 permissions that creators govern access to the details of their objects. For example, at its most
22 permissive, a creator could give an object owner the ability to alter the underlying LSL code for a
23 given object. In contrast, by using permissions, an object can be sufficiently “locked” to prohibit
24 access to anything other than the most superficial behavior of an object.

25 18. Proper setting of permissions is important because, once created, many users sell
26 copies of their objects to other users in virtual stores within Second Life, with many of those
27 entrepreneurs – Amaretto among them – making substantial profits.

1 **Virtual, Digital Animals**

2 19. A popular type of user-created object that is sold in Second Life is the “breedable
3 animal.” The term “breedable animal” in the 3D environment loosely means that the virtual animal
4 mimics the life of a real animal: it eats to survive, sleeps and replicates.

5 20. On or about October 26, 2009, unaware of any project by Defendants, Amaretto
6 wrote a “food script” in the Second Life environment, allowing a newly “born” virtual animal to eat
7 virtual food, grow into different stages of its life if it continued to eat the virtual food, and even “die”
8 if it was not fed the virtual food. That was the beginning of Amaretto’s development of the
9 Amaretto Horse Product Line which includes, among other things, an Amaretto breedable horse and
10 virtual food (sold in various quantities), of which Amaretto sells copies and thereby transfers certain
11 rights to the product to other users in Second Life.

12 21. The concept and implementation of breedable digital animals that one must feed in
13 order for it to grow, survive and replicate has been well known and was in the public domain long
14 before either Defendants’ or Amaretto’s products were in existence: for example, 1) PlantPets
15 (virtual plants that must be given virtual water to grow to survive and will self-replicate every 52
16 days) were created by Bruce Liebknecht in or about 2007; 2) Sion Zaius Chickens (virtual chickens
17 that must be given virtual feed to survive and grow from chicks to adults and are programed to
18 engage in virtual mating habits to replicate) were created on or about December 13, 2008; 3)
19 HunnyBunny (virtual bunnies that must receive virtual food to survive and are programmed to
20 engage in virtual mating habits to replicate) created by Hunny Larimore on or about January 2, 2009;
21 4) Petables’ Turtles (virtual turtles that must receive virtual food to survive and grow from babies to
22 adults and are programmed to engage in virtual mating habits to replicate) created by Mathew
23 Anthony on or about August 27, 2009; and PinkyPigs (virtual pigs that must receive virtual food to
24 survive and grow from babies to adults and are programmed to engage in virtual mating habits to
25 replicate) created on or about December 25, 2009.

26 22. Amaretto and Defendants are direct competitors in the market for breedable virtual
27 animals in Second Life.

1 **Defendants' Wrongful, Anticompetitive Conduct**

2 23. On or about November 4, 2010 Amaretto received a cease and desist letter dated
3 November 2, 2010 from the attorney representing Defendants alleging that Defendants had a
4 copyright for their virtual bunny, that the Amaretto's virtual horse was a "virtual clone" of
5 Defendants' virtual bunny, and that Amaretto's products infringed Defendants' allegedly
6 copyrighted products. (A true and correct copy of that letter is attached hereto as Exhibit 1.)
7 Defendants offered neither a copyright registration (which it did not have) nor any other authority
8 that might protect the subject matter allegedly infringed by Amaretto. In addition, Defendants
9 claimed it "introduced a breedable, virtual animal in the form of a bunny" into Second Life in late
10 2009. However, this statement was false since the Defendants' Facebook page stated that the
11 "bunny will be released to the public on January 9, 2010."

12 24. On or about November 20, 2010 and again on or about December 13, 2010,
13 Amaretto's counsel did patent searches for "breedable" virtual "animal" patents. Amaretto's counsel
14 did not locate any patents in the name of either Defendant, but rather located US Patent No.
15 7,179,171, a fish breeding toy for cellular telephones issued to Clifton L. Forlines and Joseph W.
16 Marks in 2007. The patent, which requires a cell phone, is a game where multiple virtual fish can be
17 bred with each other and the virtual genetic traits of these fish are combined to create more fish.
18 Moreover, after doing further research in other databases, he discovered that the concept of a
19 breedable virtual animal that could pass on its "genetic traits" is at least as old as June 26, 1997
20 when Digimon virtual pet (by the same creators as Pokemon) was released. Amaretto is informed
21 and believes that, since that, time there have been dozens of games and toys which use the concept to
22 one degree or another.

23 25. Amaretto later learned that, at or about the time Defendants sent their cease-and-
24 desist letter to Amaretto, Defendants were also sending correspondence to other members of the
25 Second Life community making similarly false claims that Defendants had certain copyrights and
26 that Amaretto was infringing them with its Horse Product Line. Indeed, Defendants went so far in
27 these communications as to accuse Amaretto of having knowledge of its alleged copying and to have
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1 nonetheless willfully brought to market a product that infringed upon Defendants' supposed
2 intellectual property. These communications were false and misleading and Defendants knew or
3 should have known as much.

4 26. Amaretto responded to the November 2, 2010 letter on November 22, 2010, pointing
5 out, among other things, that Defendants could not have a copyright to the functional elements or
6 traits of their products; were not the first to create a breedable, virtual animal; could not have a
7 copyright to the idea of the breedable, virtual animal; and, that because Amaretto began creating its
8 script for the "virtual food" in October 2009, it could not have copied the script to any of
9 Defendants' products that were released in January 9, 2010. (A true and correct copy of that letter is
10 attached hereto as Exhibit 2.) Furthermore, Amaretto's counsel informed Defendants that claimed
11 copyrights to the functional elements or traits of their product are not protectable under United States
12 copyright law and that a virtual animal that eats virtual food to survive and will "die" without the
13 food is an idea, which can only protected by United States patent law – both of which are basic
14 precepts of the law of intellectual property.

15 27. Rather than identify their alleged copyright or respond to Amaretto in any way
16 whatsoever, Defendants, on or about December 1, 2010, filed with Linden "take down" notice
17 pursuant to the DMCA, 17 U.S.C. § 512(c)(3). In that notice, Defendants claimed, among other
18 things, that they own the copyrights to the following: "the scripts, the screen displays, expression
19 and game play generated by those scripts for a breedable virtual animal in the form of a bunny (the
20 Ozimals Bunny). Protected expression in the Ozimals Bunny allegedly include among other things,
21 the selection and organization of certain genetic traits: settings and configurations, such as home
22 position, roaming range, sleep states and energy levels, nutritional feed levels, interactivity settings,
23 breeding settings, selection and expression of additional characteristic utilized in game play, such a
24 breeding age, specific hunger/thirst levels, specific energy levels, specific 'happiness' levels and
25 food features and characteristics." (A true and correct copy of the DMCA notice is attached hereto
26 as Exhibit 3.)

27 28. Defendants' DMCA notice also alleged that all of Amaretto's food and water
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1 products sold to Amaretto horse owners in order to keep their virtual horses “alive” infringed
2 Defendants’ alleged copyrighted expressions of genetic traits. If the takedown would have
3 implemented, the Amaretto horse owners would no longer have been able to buy food and water to
4 keep their virtual horses alive and the horses would have “died” within 72 hours, thus depriving the
5 owners of the products they purchased from Amaretto.

6 29. On or about December 9, 2010, after receiving the Defendants’ DMCA Notification
7 from Linden the day before, Amaretto submitted a counter-notice to Linden, pursuant to 17 USC §
8 512(g)(2)(B), requesting that Linden not takedown and/or restore the disputed material based on
9 facts outlined in the Amaretto’s November 22, 2010 letter and based on a good faith belief that the
10 complaint of copyright violation was based on mistaken information, misidentification of material in
11 question, or a deliberate misreading to the law. (A true and correct copy of that counter-notice is
12 attached hereto as Exhibit 4.)

13 30. Amaretto took further measures to protect itself by filing this action on December 16,
14 2010 and seeking both a temporary restraining order and preliminary injunction to prevent its
15 products from being removed from Second Life. Defendants responded by, on December 20, 2011,
16 filing a copyright infringement action against Amaretto in the District Court for the Northern District
17 of Alabama styled *Ozimals v. Amaretto Ranch Breedables, Inc.*, Case No: 10-cv-03520.

18 31. Furthermore, in a brash display, Defendants – while this Court considered whether to
19 enter the temporary injunction requested – served Linden with a *second* DMCA notice, again
20 accusing Amaretto of infringing copyrights in numerous concepts and ideas clearly not subject to
21 copyright protection. (A true and correct copy of that letter is attached hereto as Exhibit 5.)

22 32. Nonetheless, this Court issued a temporary restraining order on December 21
23 prohibiting Linden from removing Amaretto’s products. In that Order, this Court observed that
24 “copyright protection does not extend to functionality” and thus “any copyright [Ozimals] has does
25 not prevent another company from marketing virtual animals with similar traits, essentially, provided
26 that that company did not copy Defendant’s programming.” (12/21/10 Order at p.4 [DE 29].)
27 Shortly thereafter, on January 7, 2011, this Court issued a preliminary injunction mandating that
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1 Ozimals withdraw its DMCA notices from Linden and refrain from sending any more during the
2 pendency of the litigation. [DE 49.]

3 33. In the virtual computer world of Second Life, because computer script code is written
4 quickly and the created virtual images are popular for a short period of time, consumers move
5 quickly to become part of the fad before it fades. Amaretto is informed and believes that
6 Defendants' invocation of the DMCA and dissemination of false and misleading communications to
7 other third-parties, including customers and/or prospective customers of Amaretto, was a calculated
8 attempt to immediately disrupt the sales of Amaretto's products during the crucial holiday season,
9 well known to be the busiest time of year for product sales in Second Life. Further, Defendants'
10 conduct has continued to cause harm over the long term to Amaretto's goodwill and reputation by
11 causing current and prospective customers to doubt the legitimacy of Amaretto's products. At the
12 same time, Defendants' actions were an attempt to garner for itself the false and misleading
13 imprimatur of an alleged copyright in the very concept of breedable virtual animal – something it
14 clearly does not and cannot have.

15 34. Defendants' intentional, willful, and malicious actions have and will continue to
16 cause irreparable harm to Amaretto's business reputation and extensive monetary losses and thus to
17 address this injury, Amaretto must pursue this action.

18 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth more fully
19 below.

20 **FIRST CAUSE OF ACTION**
21 **(Declaratory Judgment - Declaratory Judgment Act, 28 U.S.C. § 2201)**

22 35. Plaintiff realleges and incorporates herein by reference the allegations of paragraphs
23 1-34 of the Complaint as set forth above.

24 36. Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 and Federal Rule
25 of Civil Procedure 57 for the purpose of determining and adjudicating questions of actual and
26 substantial controversy between parties having adverse legal interests of sufficient immediacy and
27 reality to warrant the issuance of declaratory judgment

1 37. There is a real and actual controversy between Amaretto Ranch Breedables, LLC and
2 Defendants as to whether Plaintiff infringes Defendants’ alleged copyrights, and whether Defendants
3 copyrights, if any, are valid and enforceable.

4 38. Plaintiff claims that its products do not infringe any exclusive rights secured by the
5 Copyright Act or any other state or federal law, including those laws prohibiting direct, contributory
6 or vicarious infringement. Plaintiff’s products are protected by the First Amendment to the United
7 States Constitution and the judicial decisions construing such laws, doctrines, and provisions, and
8 the Fair Use Doctrine, codified at 17 U.S.C. § 107. Plaintiff further claims that Defendants cannot
9 and do not have any valid copyrights.

10 39. Plaintiff is therefore entitled to a declaration and judgment that its products do not
11 infringe Defendants’ alleged copyrights, or any other exclusive rights that Defendants might assert
12 under state or federal law, and that Defendants copyrights are not valid or enforceable.

13 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth more fully
14 below.

15 **SECOND CAUSE OF ACTION**
16 **(Misrepresentation – 17 U.S.C. § 512(f))**

17 40. Plaintiff realleges and incorporates herein by reference the allegations of paragraphs
18 1-39 of the Complaint as set forth above.

19 41. Plaintiff is informed and believes and based upon such information and belief alleges
20 that Defendants had actual or constructive knowledge that Amaretto’s products did not infringe any
21 “exclusive rights” protected by the Copyright Act, 17 U.S.C. § 106.

22 42. In Defendants’ November 2, 2010 cease-and-desist letter and December 1, 2010
23 DMCA notification, purportedly issued under the authority of 17 U.S.C. § 512, Defendants
24 knowingly and materially misrepresented that Plaintiff’s products infringed Defendants’ un-
25 articulated, yet alleged copyright pertaining to obviously unprotectable subject matter. In addition,
26 Defendants knowingly and materially misrepresented that Plaintiff could be liable under copyright
27 law for selling any of its products, all of which Defendants claimed were infringing. Defendants
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1 further knowingly and materially misrepresented that they possessed valid and enforceable copyright
2 in the allegedly infringed material.

3 43. Defendants' conduct amounts to malicious and willful actions by a competitor and
4 were designed to permanently injure Plaintiff's business and reputation.

5 44. Plaintiff has been and continues to be irreparably injured by Defendants' knowing
6 and material misrepresentations and malicious and willful actions portraying Plaintiff's products as
7 infringing Defendants' alleged copyright. Defendants' actions have proximately caused damage to
8 Amaretto, including but not limited to lost profits and goodwill, monetary damage and damage to
9 reputation.

10 45. In light of the foregoing, Defendants' claim that they are innocently seeking to protect
11 their alleged, un-articulated copyright is simply a smoke-screen attempt to justify unwarranted
12 interference in the lawful sale of Plaintiff's products is in violation of the DMCA, 17 U.S.C. §
13 512(f). Plaintiff therefore seeks from the Defendants compensatory damages, punitive damages,
14 statutory or enhanced damages, attorneys' fees and costs, and any other relief this Court deems
15 appropriate.

16 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth more fully
17 below.

18 **THIRD CAUSE OF ACTION**

19 **(Common Law Tortious Interference with Prospective Business Advantage)**

20 46. Plaintiff realleges and incorporates herein by reference the allegations of paragraphs
21 1-45 of the Complaint as set forth above.

22 47. Defendants knew of Plaintiff's business and economic relations with existing and
23 potential purchaser of its Amaretto Horse Product Line and that Plaintiff's expectancy of additional
24 sales to existing customers and new sales to new customers would be disrupted by Defendants'
25 repeated knowing misrepresentations to members of Second Life that Plaintiff's products were
26 infringing Defendants' supposed copyrights. By causing current and prospective customers to
27 question the legitimacy of Plaintiff's products, Plaintiff is informed and believes that Defendants
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1 induced those existing and potential customers to purchase alternative products to Plaintiff's, thereby
2 harming Plaintiff.

3 48. Defendants' conduct was independently wrongful in that, as set forth herein,
4 Defendants – in their written and oral communications to third-parties, excepting their DMCA notice
5 to Linden – falsely disparaged the quality of Plaintiff's products and was a substantial cause of
6 prospective purchasers of those products instead choosing to purchase others. Further, Defendants'
7 conduct violates both the statutory and common law prohibition against unfair competition.

8 49. Defendants have committed and continue to commit such intentional, willful and
9 malicious acts with the design of disrupting Plaintiff's business relations and reaping for themselves
10 future economic benefit that would flow to Plaintiff. Such actions have caused and will continue to
11 cause damage to Plaintiff, including but not limited to lost profits and goodwill, monetary damage
12 and damage to reputation. Plaintiff therefore seeks from the Defendants compensatory damages,
13 punitive damages, statutory or enhanced damages, attorneys' fees and costs, and any other relief this
14 Court deems appropriate.

15 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth more fully
16 below.

17 **FOURTH CAUSE OF ACTION**
18 **(Unfair Competition - California Business and**
19 **Professions Code § 17200 et seq. And at Common Law)**

20 50. Plaintiff realleges and incorporates herein by reference the allegations of paragraphs
21 1-49 of the Complaint as set forth above.

22 51. In violation of California's Unfair Competition law and for the purpose of preventing
23 Plaintiff from competing during the all important holiday shopping season, Defendants' have
24 engaged in unlawful, unfair and/or fraudulent business practices by claiming – in repeated
25 representations to the Second Life community, excepting Defendants' DMCA notice – that all of
26 Plaintiff's products infringe Defendants' alleged copyrights. Said conduct likewise violated
27 California's common law prohibition on unfair competition.

28 52. As a proximate result of the acts of Defendants as alleged herein, Plaintiff has

1 suffered and will continue to suffer great damage, including lost profits and by tarnishing of its
2 business, goodwill and reputation by not being able to sell its products during the all-important
3 holiday shopping season.

4 53. Plaintiff has no adequate remedy at law for the acts of unfair competition as alleged
5 herein. Unless this Court declares that Plaintiff's products do not infringe upon any of Defendants'
6 supposed copyrights and enjoins Defendants' from sending further DMCA alleging otherwise,
7 Plaintiff will not be allowed to continue selling its products and will suffer irreparable harm.

8 54. Defendants have committed and continue to commit such intentional, willful and
9 malicious acts with the design of disrupting Plaintiff's business relations and reaping for themselves
10 future economic benefit that would flow to Plaintiff. Such actions have caused and will continue to
11 cause damage to Plaintiff, including but not limited to lost profits and goodwill, monetary damage
12 and damage to reputation. Because such conduct is in violation of California's common law
13 prohibition on unfair competition, Plaintiff therefore seeks from the Defendants compensatory
14 damages, punitive damages, statutory or enhanced damages, attorneys' fees and costs, and any other
15 relief this Court deems appropriate.

16 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth more fully
17 below.

18 **FIFTH CAUSE OF ACTION**
19 **(Misuse of Copyright - 17 U.S.C.A. § 102(b))**

20 55. Plaintiff realleges and incorporates herein by reference the allegations of paragraphs
21 1-54 of the Complaint as set forth above.

22 56. Plaintiff did not copy Defendants' products, products code, textures or any other
23 expressions allegedly owned by Defendants.

24 57. Defendants do not, and cannot own a copyright to the functions encapsulated in their
25 product as copyrights do not protect functions, pursuant to 17 U.S.C.A. § 102(b).

26 58. Defendants have claimed ownership of a copyright and yet have failed to articulate
27 with specificity what text, graphic, script, etc. are included in their alleged copyright, nor have
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1 Defendants submitted to Plaintiff a registered copyright. Furthermore, Defendants have filed their
2 own, independent action for copyright infringement against Plaintiff.

3 59. Plaintiff is informed and believes and based upon such information and belief alleges
4 that Defendants' motivation for alleging that Plaintiff infringed Defendants' supposed copyrights
5 was not to protect those alleged copyrights, but rather to prevent Plaintiff from competing with
6 Defendants during the crucial holiday shopping season.

7 60. By, among other things, filing their own copyright infringement action against
8 Plaintiff, Defendants engaged in the misuse of their alleged copyrights when Defendants knew, or
9 should have known, that Defendants copyrights are invalid and/or that Plaintiff's products did not
10 infringe any of Defendants' alleged copyrights.

11 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth more fully
12 below.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Amaretto respectfully prays that the Court order the following relief:

15 A. That the Court enter a permanent injunction prohibiting Defendants, their officers,
16 agents, servants, employees, and/or all persons acting in privity or in concert or participation with
17 them or any of them, from: (1) requesting the taking down any of Amaretto's products from the
18 Second Life 3D environment and any other 3D environment and (2) engaging in any course of
19 conduct likely to cause injury to Amaretto's business or reputation, now or in the future:

20 B. A permanent injunction prohibiting the current service provider Second Life/Linden
21 Research, Inc. from taking down Amaretto's products pursuant to § 512(c)(3) of the DMCA:

22 C. A declaratory judgment declaring pursuant to 28 U.S.C. § 2201 and Federal Rule of
23 Civil Procedure 57 that (1) Plaintiff's products do not infringe upon any of Defendants' alleged
24 copyrights and (2) Defendants' acts and practices violate 17 U.S.C. § 512, and injunction against
25 further violations; and award of damages sustained by Plaintiffs, including interest, costs, and
26 attorney fees:

27 D. An award of compensatory, consequential, statutory, enhanced, and punitive damages
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1 in an amount to be determined at trial;

2 E. An award of interest, costs and attorneys' fees incurred by Amaretto in prosecuting
3 this action; and

4 F. All other relief to which Amaretto is entitled.

5 Dated: February 9, 2011

KRIEG, KELLER, SLOAN, REILLEY & ROMAN LLP

6
7 By: _____/s/_____
8 KENNETH E. KELLER
9 Attorneys for Plaintiff
10 AMARETTO RANCH BREEDABLES, LLC

11 **DEMAND FOR JURY TRIAL**

12 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, demand is hereby made for
13 trial by jury on all issues triable to a jury.

14 Dated: February 9, 2011

KRIEG, KELLER, SLOAN, REILLEY & ROMAN LLP

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17 By: _____/s/_____
18 KENNETH E. KELLER
19 Attorneys for Plaintiff
20 AMARETTO RANCH BREEDABLES, LLC