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6
7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**

9 ASTRAL IP ENTERPRISE LTD., a Canadian
limited company,

10 Plaintiff,

11 v.

12 HorizonMatrix,

13 Defendant.

Case No.:

COMPLAINT FOR

**(1) FEDERAL COPYRIGHT
INFRINGEMENT**

**(2) CALIFORNIA STATUTORY
UNFAIR COMPETITION**

JURY TRIAL DEMANDED

15
16 Plaintiff, Astral IP Enterprise Ltd. (“Plaintiff”), by and through its attorneys of record,
17 appears and states by way of the Complaint and alleges the following against Defendant
18 HorizonMatrix (“Defendant”), and alleges based on information and belief as follows:

19 **PARTIES**

20 1. Plaintiff has its principal place of business at Suite 1510, 800 West Pender Street
21 Vancouver, BC Canada V6C2V6.

22 2. Defendant is a mobile application developer that publishes mobile applications on
23 at least the Google Play store under the developer name HorizonMatrix.

24 3. Defendant submitted a DMCA Counter-Notice, but did not provide an entity name.
25

1 4. In the DMCA Counter-Notice, Defendant identified its address as 403 Grace Court
2 Ueno, 4-2-1 Matsugaya, Taito-ku, Tokyo, 111-0036, but Plaintiff has been unable to verify this
3 address to date.

4 5. Defendant also identified a contact email address of heartprayln@gmail.com in
5 the DMCA Counter-Notice.

6 6. Plaintiff does not have any other contact information for Defendant.

7 **JURISDICTION AND VENUE**

8 7. This action is brought under, and subject matter jurisdiction of this matter is vested
9 in this Court through, 28 U.S.C. § 1331 (Federal Question Jurisdiction) and 1338 (action arising
10 under an Act of Congress relating to trademarks and copyrights). This action is also brought under
11 the copyright laws of the United States, Copyright Act of 1976, as amended, (17 U.S.C. § 101 *et*
12 *seq.*) as applicable through the Berne Convention for the Protection of Literary and Artistic
13 Works.

14 8. The Court has supplemental jurisdiction over all state and common law claims
15 pursuant to 28 U.S.C. § 1367. The state law claims are integrally related to the federal claims and
16 arise from a common nucleus of operative facts.

17 9. Venue is proper in this action under 28 U.S.C. § 1391 because Defendant does
18 business within the state of California, a substantial part of the harm from the events or omissions
19 giving rise to the claims occurred in this District, and because the Defendant is subject to personal
20 jurisdiction in this District.

21 10. Defendant's infringing mobile application was available throughout the United
22 States and was available on the Google Play website. On information and belief, consumers within
23 the Northern District of California have downloaded and have made, and will continue to make,
24 purchases from Defendant's infringing mobile application. Therefore, Plaintiff's claims of
25 infringement include transactions that happened on a regular basis within California's
jurisdiction.

1 11. Defendant transacted and conducted, and will continue to transact and conduct,
2 business in this judicial district, purposefully availing itself of the benefits and laws of this judicial
3 district and purposefully directing significant and substantive contacts at this judicial district.
4 Defendant maintains ongoing contractual relationships within this district and conducts or solicits
5 business within this district. Defendant directly and/or through intermediaries, offers for sale,
6 sells, and advertises its products that are pertinent to this action within this district.

7 12. On information and belief, Defendant is not a resident of the United States.
8 Therefore, for venue purposes under 28 U.S.C. § 1391(c)(3), Defendant may be sued in any
9 judicial district, including the Northern District of California.

10 13. Defendant has consented to the venue of the Northern District of California within
11 a DMCA Counter-Notice in accordance with 17 U.S.C. § 512(g)(3) and is therefore subject to the
12 personal jurisdiction of this Court.

13 **BACKGROUND FACTS**

14 14. Plaintiff has designed and created various mobile applications and authorizes the
15 use of those mobile applications by developer accounts on online platforms such as Google Play.

16 15. One of Plaintiff's mobile applications is titled "Lose Weight App for Women"
17 (hereinafter "Plaintiff's Mobile App") and is offered on the Google Play store.

18 16. Since at least as early as October 31, 2019, when Plaintiff's Mobile App was
19 released worldwide on the Google Play store through an authorized developer account named
20 Leap Fitness Group, Plaintiff and its predecessors in interest have spent significant time, effort,
21 and resources helping Plaintiff's Mobile App build success and popularity amongst consumers.

22 17. Since its release, Plaintiff's Mobile App has obtained over one hundred million
23 downloads, received over one million reviews, and still currently boasts an impressive 4.8/5 star
24 rating.

1 18. Plaintiff owns all exclusive rights, including without limitation the rights to
2 reproduce the copyrighted work within Plaintiff's Mobile App, to prepare derivative works based
3 upon the copyrighted work, and to distribute copies of the copyrighted work to the public.

4 19. Plaintiff's copyrighted works include, but are not limited to, fitness images of a
5 female figure in pink and black workout clothes with brown hair in a ponytail doing various
6 exercises.

7 20. Plaintiff's fitness images are original designs that were initially created in 2016
8 and gradually introduced into Plaintiff's numerous fitness apps between 2017 and 2019, with
9 additional exercises added over time.

10 21. The images with the woman in pink and black workout clothes with brown hair in
11 a ponytail doing various exercises have been included in Plaintiff's Mobile App since its release
12 on or about October 31, 2019.

13 22. On information and belief, Defendant had previously created its own fitness
14 mobile applications, since approximately 2021, infringing on Plaintiff's trademark and copyright
15 rights that were provided under a different developer name.

16 23. Plaintiff submitted a complaint to Google and the Defendant's infringing mobile
17 applications were removed on or about July 31, 2024.

18 24. Immediately thereafter, on or about August 2, 2024, August 7, 2024, and August
19 30, 2024, Defendant created three more fitness mobile applications ("Defendant's Infringing
20 Apps") under the current name of HorizonMatrix.

21 25. Defendant's Infringing Apps use the exact same figure of a woman in pink and
22 black workout clothes with brown hair in a ponytail doing various exercises as the previous
23 infringing mobile applications that were removed on or about July 31, 2024 and again tried to
24 copy Plaintiff's trademarks.
25

1 26. After Plaintiff submitted a trademark complaint to Google, Defendant changed the
2 infringing icons, but kept using the same internal images that remained infringing on Plaintiff's
3 copyrights.

4 27. Upon information and belief, Defendant's Infringing Apps directly copied
5 numerous images as used by Plaintiff's Mobile App with the direct and deliberate intention of
6 confusing the consuming public so searches for Plaintiff's Mobile App would download one
7 Defendant's Infringing Apps by mistake.

8 28. Alternatively, Defendant's Infringing Apps were so strikingly similar, or at the
9 very least substantially similar, to Plaintiff's copyrighted work concerning the numerous fitness
10 exercise images as to constitute an unauthorized copying, reproduction, distribution, creation of
11 a derivative work, and/or public display of Plaintiff's copyrighted work.

12 29. Defendant had access to Plaintiff's Mobile App and intentionally incorporated
13 Plaintiff's copyrighted work in order to benefit from a pre-existing and highly rated mobile
14 application that provides the same function.

15 30. On information and belief, Defendant's Infringing Apps were intentionally
16 uploaded under different developer name immediately after the previously infringing mobile
17 applications were removed in an attempt to circumvent legitimate removals and avoid further
18 detection.

19 31. Defendant had direct knowledge of Plaintiff's Mobile App prior to the creation,
20 design, and release of Defendant's Infringing Apps.

21 32. Defendant's exploitation of Plaintiff's copyrighted work within Plaintiff's Mobile
22 App for Defendant's Infringing Apps constitutes infringement of Plaintiff's copyrights.

23 33. On information and belief, Defendant's infringing acts were willful, deliberate,
24 and committed with prior knowledge of Plaintiff's copyrighted work. Defendant acted willfully,
25 wantonly, and in conscious disregard and intentional indifference to the rights of Plaintiff.

1 34. Defendant's Infringing Apps represent a clear attempt to benefit from Plaintiff's
2 hard-earned popularity and goodwill.

3 35. Plaintiff sent a DMCA Takedown Notice through Google Play's internal system
4 with the evidence of the numerous copied images.

5 36. Google removed Defendant's Infringing Apps in response to the DMCA
6 Takedown Notice.

7 37. Defendant submitted a DMCA Counter-Notice to Google to have Defendant's
8 Infringing Apps restored.

9 38. Plaintiff was left with no other recourse than to bring the present action against
10 Defendant in order to protect Plaintiff's intellectual property rights.

11 **FIRST CAUSE OF ACTION**

12 **Federal Copyright Infringement – 17 U.S.C § 501, *et seq.***

13 39. Plaintiff hereby re-alleges and incorporates each and every allegation set forth in
14 Paragraphs 1-38 as if the same was more fully set forth herein.

15 40. Plaintiff owns the copyrights for its numerous exercise images contained within
16 and relating to Plaintiff's Mobile App.

17 41. Plaintiff's Mobile App, including the copyrighted work therein, was released
18 globally to numerous countries worldwide at least as early as October 31, 2019.

19 42. Plaintiff is entitled to protection of its copyrighted works through the Berne
20 Convention for the Protection of Literary and Artistic Works, in which the United States is a
21 signatory, along with many other countries in which Plaintiff's Mobile App was released.

22 43. According to the official Guide to Copyrights from the Canadian Intellectual
23 Property Office ("CA IPO"), Plaintiff is entitled to automatic copyright protection based on its
24 residency in Canada at the time of creation of the work.

25 44. Canada does not require a copyright registration to bring an infringement suit.

1 wrongful, knowing, willing, and malicious, and constitute unfair competition under California
2 law.

3 52. Defendant's aforesaid acts have caused and will continue to cause Plaintiff to
4 suffer damages and irreparable injury, and unless such acts are restrained by this Court through
5 preliminary and/or permanent injunctive relief, such acts will be continued, and Plaintiff will
6 continue to suffer damages and irreparable injury.

7 53. Defendant has acted with malice, oppression, and fraud, as defined in California
8 Civil Code § 3294, and willfully and with the intent to cause injury to Plaintiff and with complete
9 disregard to Plaintiff's rights, thereby warranting an assessment of punitive damages in an amount
10 appropriate to punish Defendant and to deter others from engaging in similar conduct.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff prays for judgment against Defendant as follows:

- 13 1. For judgment in favor of Plaintiff against Defendant on all claims.
- 14 2. That pursuant to 17 U.S.C. § 502 and its inherent equitable powers, the
15 Court issue a preliminary and permanent injunction restraining and enjoining Defendant
16 from providing Defendant's Infringing Apps due to the violation of Plaintiff's copyrighted
17 works.
- 18 3. That pursuant to 17 U.S.C. § 504, Plaintiff recover actual damages and
19 Defendant's profits, such sums to be proven at trial.
- 20 4. That pursuant to California Business & Professions Code § 17200 *et seq.*,
21 Plaintiff be awarded damages in an amount to be proven at trial.
- 22 5. That pursuant to California Civil Code § 3294, the Court award punitive
23 damages against Defendant in an amount to be determined by the trier of fact.
- 24 6. Awarding to Plaintiff compensatory, general and special, consequential and
25 incidental damages in any additional, yet currently unknown, amount to be determined at
trial.

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

ASTRAL IP ENTERPRISE LTD.

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Bayramoglu Law Offices LLC; 1540 W. Warm Springs Rd, Ste. 100, Henderson, Nevada 89052; Tel: (702) 462-5973

DEFENDANTS

HorizonMatrix

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 17 U.S.C. § 101 et seq., Cal. Bus. & Prof. Code § 17200 et seq.

Brief description of cause: Federal Copyright Infringement, Cal. Unfair Competition

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 10/24/2024

SIGNATURE OF ATTORNEY OF RECORD

/David Silver/