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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

INDIGO VAPOR ENTERPRISES LLC, )

Plaintiff, )

v. )

Cause No.: 3:15-cv-451

INDIGO VAPOR COMPANY, LLC, )

ROBERT LEE MARTIN, and )

CHARLES NANDIER, )

Defendants. )

**COMPLAINT**

INDIGO VAPOR ENTERPRISES, LLC, (“Indigo Vapor Enterprises”), by counsel, states its Complaint against INDIGO VAPOR COMPANY, LLC (“I.V. Company”), ROBERT LEE MARTIN (“Martin”), and CHARLES NANDIER (“Nandier”) (together, I.V. Company, Martin, and Nandier are “Defendants”) as follows:

**THE PARTIES**

1. Plaintiff Indigo Vapor Enterprises is a limited liability company organized under the laws of Indiana, with its principal place of business in South Bend, Indiana. Indigo Vapor Enterprises is in the business of selling vaping and e-cigarette materials, including e-juice, across the United States and throughout the world. Indigo Vapor Enterprises’ members, Tony Jimenez and Cheryl Reed, are both citizens of Indiana.

2. Defendant I.V. Company is a limited liability company organized under the laws of Arizona, with its principal place of business at 5755 East River Road #1130, Tucson, Arizona 85750. I.V. Company sells products similar to and in the same marketplace as those sold by Indigo Vapor Enterprises. I.V. Company regularly transacts

business in the state of Indiana, including within this judicial district. I.V. Company's members, Martin and Nandier, are citizens of Arizona.

3. Defendant Martin is an individual who is a resident and citizen of Arizona. Martin is the registrant of the domain name indigovaporcompany.com, is the registered agent for and a member and principal of I.V. Company, and is actively involved individually and through I.V. Company in the acts complained of herein.

4. Defendant Nandier is an individual who is a resident and citizen of Arizona. Nandier is a member and principal of I.V. Company and is actively involved individually and through I.V. Company in the acts complained of herein.

#### **NATURE OF THE ACTION**

5. This is an action for trademark infringement under the Trademark Act of 1946, 15 U.S.C. §§ 1051 et seq., as amended ("the Lanham Act") for infringement, dilution, and false designation of origin; the Anticybersquatting Consumer Protection Act ("ACPA"), 15 U.S.C. § 1125(d); and for trademark infringement and unfair competition under federal law, Indiana common law, and other states' common law. As alleged in more detail below, Defendants have engaged, and are continuing to engage, in a conscious and systematic pattern of infringement, cybersquatting, dilution, and unfair competition through the use of Indigo Vapor Enterprises' name and trademarks to promote Defendants' own competing business and interests. Indigo Vapor Enterprises brings this action seeking injunctive relief and damages because Defendants have advertised, offered, and provided their competing products and services in a manner that violates Indigo Vapor Enterprises' valuable intellectual property rights and otherwise violates Indigo Vapor Enterprises' rights.

## **JURISDICTION AND VENUE**

6. This Court has federal subject matter jurisdiction over Indigo Vapor Enterprises' claims through federal question jurisdiction via the Lanham Act and other federal statutes under and pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338. The Court also has subject matter jurisdiction through diversity jurisdiction over the claims and supplementary jurisdiction over state and common law claims under and pursuant to 28 U.S.C. §§ 1332(a) and 1367. The amount in controversy in this case exceeds \$75,000, exclusive of interest and costs.

7. This Court has personal jurisdiction over Defendants because Defendants have, *inter alia*, transacted business and committed infringement and tortious acts, both individually and through I.V. Company, within the State of Indiana by offering competing products under Indigo Vapor Enterprises' name and trademarks, causing confusion on the part of Indiana residents, and targeting Indiana residents.

8. Venue is proper and appropriate in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Indigo Vapor Enterprises' claims have occurred and, unless enjoined will continue to occur, within this district.

## **FACTUAL ALLEGATIONS**

### ***Indigo Vapor Enterprises' Trademarks***

9. Indigo Vapor Enterprises is the owner of all right, title, and interest in the federally registered trademarks INDIGO VAPOR® (Stylized) and INDIGO VAPOR® (collectively, the "Registered Marks") and the same trade names. The trademark registration numbers are 4,790,247 and 4,790,244, respectively. The trademark registration certificates are attached as Exhibit A.

10. As the owner of the Registered Marks, Indigo Vapor Enterprises has the exclusive right to provide and advertise vaping and electronic cigarette materials, including electronic cigarette liquid, under the Indigo Vapor Enterprises Registered Marks in the United States. As a result of the advertising and selling of those goods in the United States and throughout the world, Indigo Vapor Enterprises' trademarks enjoy significant goodwill among relevant consumers in the United States.

11. Indigo Vapor Enterprises' trademarks are famous and became so prior to any of the Defendants' wrongful acts discussed herein.

### ***Indigo Vapor Enterprises' Products***

12. Indigo Vapor Enterprises began using its trademarks in commerce in September 2012 and has had tremendous success in the e-cigarette and vaping markets. Since September 2012, Indigo Vapor Enterprises has received more than 24,500 orders, with more than \$1.7 million in sales.

13. Indigo Vapor Enterprises uses its website, with its trademarks prominently displayed, to sell its e-cigarette and vaping products to customers throughout the United States and the world. Copies of Indigo Vapor Enterprises' key website pages are attached as Exhibit B.

14. Indigo Vapor Enterprises has provided its e-cigarette and vaping products continuously since September 2012.

15. Indigo Vapor Enterprises is established and successful in the e-cigarette and vaping industry based on its unique and quality products, particularly its e-juice.

16. The company's remarkable sales, positive online reviews, and Reddit comments make clear that the phrase "Indigo Vapor" and the marks — INDIGO VAPOR® (Stylized) and INDIGO VAPOR® — have achieved secondary meaning. That is, the

Registered Marks have come to be associated with Indigo Vapor Enterprises in the minds of the public and consumers of vaping and e-cigarette products.

17. Indigo Vapor Enterprises has spent tens of thousands of dollars developing, advertising, and promoting its e-cigarette and vaping goods offered under the Indigo Vapor Enterprises Registered Marks and at the indigovapor.com domain name.

18. Indigo Vapor Enterprises enjoys significant goodwill in the Indigo Vapor Enterprises Registered Marks and in connection with being the source of quality e-cigarette and vaping products. This is due to the well-known excellent reputation in the e-cigarette and vaping market that Indigo Vapor Enterprises has earned, and the considerable investment of time and money that Indigo Vapor Enterprises has made to build the Indigo Vapor Enterprises Registered Marks both in the U.S. and internationally.

***Defendants' Wrongful Acts***

19. Defendants have used and continue to use Indigo Vapor Enterprises' Registered Marks in a manner that has caused confusion and is likely to cause confusion on the part of Indiana residents and others, and Defendants are thereby infringing upon Indigo Vapor Enterprises' rights in its trademarks.

20. Defendants are using the trademarked phrase "Indigo Vapor" in connection with the sale of the same type of products that Indigo Vapor Enterprises sells, primarily e-cigarette and vaping products. Defendants sell these products at retail, over the Internet, and through its domain name indigovaporcompany.com.

21. Defendants' website has remarkable similarities to Indigo Vapor Enterprises' website and trademarks. Specifically, the use of the trademarked phrase "Indigo Vapor," vapor images in the background, and the dark blue and purple colors are

all substantially similar to Indigo Vapor Enterprises' use of its trademarks and its website, indigovapor.com.

22. Nandier is a member of I.V. Company. Martin is the registered agent for and a member of I.V. Company. A copy of I.V. Company's registration with the Arizona Corporate Commission is attached as Exhibit C. Martin is also actively and directly involved in committing the infringing acts: managing I.V. Company's business under its corporate name. Martin registered the website under the indigovaporcompany.com domain name (the "infringing Domain Name"). An accurate copy of the "WHOIS" data for the infringing Domain Name is attached as Exhibit D.

23. A true and accurate copy of pages from Defendants' website as of September 21, 2015, is attached as Exhibit E. The website lists the company name as "Indigo Vapor Company, LLC."

24. Defendants have used the infringing Domain Name with the intent to direct consumers to Defendants' website by creating a likelihood of confusion as to source, sponsorship, or endorsement of the website. They continue to hold the infringing Domain Name rather than transfer it to Indigo Vapor Enterprises. They also continue to direct consumers and the public to their website through the use of other websites, such as Reddit and Facebook.

25. Martin and Nandier are ignoring, controlling, and manipulating the corporate form such that it has become a mere instrumentality of both Martin and Nandier individually. Martin and Nandier have done this by, *inter alia*, undercapitalizing the company; not diligently keeping corporate records; using the corporate form to promote fraud, namely, the infringement upon and other wrongful acts against Indigo Vapor Enterprises and its products; and failure to observe required corporate formalities

including but not limited to failing to keep a legitimate and working registered agent address. Their use of the corporate form constitutes a fraud and promotes injustice.

26. Moreover, apart from the use of Indigo Vapor Enterprises' trademarks in I.V. Company's infringing Domain Name, Defendants continue to use Indigo Vapor Enterprises' trademarks in a commercial context and in connection with goods that are substantially the same as the goods that Indigo Vapor Enterprises provides. Defendants' actions are knowing and intentional. For example, these additional uses have occurred on Reddit and Facebook. In an October 31, 2014 post on Reddit, Tony Jimenez of Indigo Vapor Enterprises (posting as IndigoTony) alerted I.V. Company that Indigo Vapor Enterprises selected the name "Indigo Vapor" two years prior. Defendant (Robert Lee) Martin of I.V. Company responded on behalf of I.V. Company (posting as IndigoVaporCompany) by listing I.V. Company's website and stating that "we couldn't be as creative as you on the name.... We'll hire a new CEO and make sure that coming up with clever names is actually listed on his/her resume. All jokes aside, we actually consider your site to be one of the better Vape sites out there and like the colorful product names and neat (engaging) pictures. Honestly...You taught us a thing or two on what a vaping site should look like. It would get boring if it wasn't for the learning. Anyway, good luck on your future endeavors... Rob (IndigoVaporCompany) CEO." A true and accurate copy of this Reddit post is attached as Exhibit F.

27. In another Reddit post, a user alerted I.V. Company (posting as IndigoVaporCompany) that "I think the name Indigo Vapor is taken... www.indigovapor.com[.]" The I.V. Company responded by stating that the companies were different: "We're www.indigovaporcompany.com , not to be confused with indigo

vapor enterprises, LLC or [www.indigovapor.com](http://www.indigovapor.com) Check us out and compare.” A true and accurate copy of this Reddit post is included in Exhibit F.

28. Defendants’ Facebook page also uses Indigo Vapor Enterprises’ trademarked phrase in connection with the sale and promotion of vaping goods. A true and accurate copy of pages from Defendants’ Facebook site is attached as Exhibit G.

29. Defendants have no rights in the infringing Domain Name, which wholly incorporates Indigo Vapor Enterprises’ trademarks. Defendants have no trademark or other intellectual property rights in the infringing Domain Name.

30. Defendants are not making a bona fide noncommercial or fair use of Indigo Vapor Enterprises’ Registered Marks.

### ***Injury to Indigo Vapor Enterprises***

31. Defendants’ actions have injured, and if permitted to continue, will irreparably injure Indigo Vapor Enterprises, its trademarks, the goodwill associated with its marks, and its reputation for quality goods.

32. Defendants’ actions are likely to cause confusion, mistake, or deception and have caused confusion, mistake, or deception in Indiana and elsewhere as to the source, origin, sponsorship, authorization, or affiliation of I.V. Company’s e-cigarette and vaping products. Defendants’ actions also are likely to suggest falsely a sponsorship, connection, license, or association of I.V. Company’s goods with Indigo Vapor Enterprises by virtue of the above, and/or will divert profits from Indigo Vapor Enterprises.

33. Defendants’ actions have interfered with and damaged, and will continue to interfere with and damage, Indigo Vapor Enterprises’ relationships with consumers and potential purchasers of Indigo Vapor Enterprises’ e-cigarette and vaping products.



34. Defendants' actions have a substantial effect on interstate commerce, at least because they sell their products to customers throughout the United States and engage in commerce through the infringing Domain Name, which is accessible throughout the United States.

35. Indigo Vapor Enterprises has no adequate remedy at law because its damages, including lost profits and diminished good will, are impossible to quantify and therefore monetary damages alone cannot adequately and fully compensate Indigo Vapor Enterprises for the harm caused by Defendants' conduct.

### **CAUSES OF ACTION**

#### ***Count I – Federal Trademark Infringement***

##### ***Lanham Act (15 U.S.C. § 1114)***

36. Indigo Vapor Enterprises hereby re-alleges and incorporates by reference the allegations of all paragraphs above.

37. Indigo Vapor Enterprises owns the federally registered trademarks INDIGO VAPOR® (Stylized) and INDIGO VAPOR® and the same trade names. The trademark numbers 4,790,247 and 4,790,244 remain in full force and effect.

38. Defendants are using a confusing similar name, "Indigo Vapor Company," to sell the same types of products as sold by Indigo Vapor Enterprises and to sell them in the same manner, via Internet sales. Defendants' website and products misappropriate Indigo Vapor Enterprises' trademarks in connection with the sale, and offer to sell, the same types of products as sold by Indigo Vapor Enterprises.

39. I.V. Company, along with Mr. Martin and Mr. Nandier, as owners, members, officers, and alter egos, have willfully and deliberately infringed and sought to appropriate to themselves the goodwill associated with the Registered Marks of Indigo

Vapor Enterprises by advertising, offering for sale, and selling in interstate commerce vaping and similar products under the federally registered INDIGO VAPOR® name.

40. The Defendants are trading on Indigo Vapor Enterprises' goodwill and reputation in order to further Defendants' business.

41. Indigo Vapor Enterprises used the Registered Marks in commerce prior to any use of the Registered Marks by the Defendants.

42. The acts of the Defendants have caused and are likely to cause confusion, mistake, and deception as to the source, origin, or sponsorship of the Defendants' vaping products.

43. As a direct result of the Defendants' infringement of the Registered Marks, Indigo Vapor Enterprises has suffered damages and irreparable harm for which there is no adequate remedy at law.

***Count II – Federal Unfair Competition***

***Lanham Act (15 U.S.C. § 1125(a))***

44. Indigo Vapor Enterprises hereby re-alleges and incorporates by reference the allegations of all paragraphs above.

45. By virtue of Indigo Vapor Enterprises' extensive advertising, substantial promotion, and the provision by Indigo Vapor Enterprises of high-quality products under Indigo Vapor Enterprises' trademarks, the relevant purchasing public, including the general public, has come to identify Indigo Vapor Enterprises as the source and origin of high-quality e-cigarette and vaping products offered under Indigo Vapor Enterprises' trademarks.

46. Defendants have infringed, and contributed to the infringement of, Indigo Vapor Enterprises' trademarks by marketing and advertising e-cigarette and vaping

products and by using Indigo Vapor Enterprises' trademarks in connection with that marketing and advertising, including under the infringing Domain Name. These acts deceive and mislead the public into believing that Defendants' products are actually Indigo Vapor Enterprises' products or are otherwise sponsored, authorized, endorsed, supervised, and/or guaranteed by Indigo Vapor Enterprises.

47. As Indigo Vapor Enterprises cannot control the quality of Defendants' offered products or the content on the websites operated by Defendants, Defendants' actions have caused and, unless enjoined, will continue to cause irreparable harm to Indigo Vapor Enterprises and its trademarks.

48. The foregoing acts, practices, and conduct of Defendants misrepresent the nature, characteristics, and qualities of Indigo Vapor Enterprises' products. Defendants' conduct constitutes unfair competition; false designation, description or representation; false advertising; fraud; and/or unfair or deceptive trade practices that are likely to cause confusion or mistake by the public, in violation of 15 U.S.C. § 1125(a).

49. As a direct and proximate result of the foregoing acts, practices, and conduct, Indigo Vapor Enterprises has been or is likely to be substantially injured in its business, including its reputation and business identity, resulting in lost revenues and profits and diminished goodwill and reputation.

50. Indigo Vapor Enterprises has no adequate remedy at law because its trademarks are unique and represent to the public the source, reputation, and goodwill of Indigo Vapor Enterprises' products. The damages caused by Defendants' actions are not susceptible to any ready or precise calculation because such damages involve lost profits, lost business opportunities, loss of goodwill, and the impairment of the integrity

of Indigo Vapor Enterprises' products and trademarks. Accordingly, monetary damages alone cannot fully compensate Indigo Vapor Enterprises for Defendants' misconduct.

51. Unless enjoined by the Court, Defendants will continue to make false descriptions or representations and to pass off the products as provided by, sponsored by, or associated with Indigo Vapor Enterprises – all to Indigo Vapor Enterprises' irreparable injury. This threat of future injury to Indigo Vapor Enterprises' business identity, goodwill, and reputation requires injunctive relief to: prevent Defendants' continued false descriptions, representations, and passing off; and ameliorate and mitigate Indigo Vapor Enterprises' injury.

52. Defendants' conduct has caused irreparable harm in the form of lost business and reputation and other irreparable damages, entitling Indigo Vapor Enterprises to recover compensatory damages and obtain injunctive relief.

***Count III – False Designation of Origin***

***Lanham Act (15 U.S.C. § 1125(a)(1)(B))***

53. Indigo Vapor Enterprises hereby re-alleges and incorporates by reference the allegations of all paragraphs above.

54. Indigo Vapor Enterprises has rights in the company name, trade name, and trademarks using the phrase "Indigo Vapor" in connection with vaping and e-cigarette products throughout the United States.

55. Defendants' use of "Indigo Vapor" as a trade name and trademark and infringing Domain Name in the marketing and selling of vaping and e-cigarette products throughout the United States is likely to cause, and has caused, public confusion and mistake as to the source of Defendants' products, as to the affiliation, connection, or

association of Defendants with Indigo Vapor Enterprises, and/or as to the sponsorship or approval of Defendants' products and commercial activities by Indigo Vapor Enterprises.

56. Because Defendants' products are not the products of Indigo Vapor Enterprises and are not otherwise authorized to use any of the Indigo Vapor Enterprises trademarks or trade names, such willful and deliberate conduct by Defendants in promoting, advertising, and providing e-cigarette and vaping products under the confusingly similar Indigo Vapor Enterprises trademarks constitutes a false designation of origin, a false or misleading description of fact, and/or a false or misleading representation of fact, all of which misrepresents the source, nature, characteristics, qualities and/or origin of Defendants' products, in violation of Section 43(a)(1)(B) of the Lanham Act, as amended, 15 U.S.C. § 1125(a)(1)(B).

57. As a result of the foregoing acts, Indigo Vapor Enterprises has been irreparably harmed and is entitled to injunctive relief.

***Count IV – Federal Trademark Dilution***

***Lanham Act (15 U.S.C. § 1125(c))***

58. Indigo Vapor Enterprises hereby re-alleges and incorporates by reference the allegations of all paragraphs above.

59. Defendants have used in commerce, and contributed to the use in commerce of, trademarks and trade names, namely INDIGO VAPOR® (Stylized) and INDIGO VAPOR®, that are likely to cause dilution by blurring or dilution by tarnishment of Indigo Vapor Enterprises' distinctive and famous Indigo Vapor trademarks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

60. The Indigo Vapor trademarks became "famous" as defined by 15 U.S.C. § 1125(c)(1) by reason of their continued and extensive use and Indigo Vapor Enterprises'

advertising, marketing, and successful sales prior to any of Defendants' wrongful acts discussed herein.

61. Defendants have wholly incorporated Indigo Vapor Enterprises' trademarks into their business name and are using the marks to promote Defendants' interest and business that directly compete with the business of Indigo Vapor Enterprises, including in connection with the website operated by Defendants under the infringing Domain Name. As a result, Defendants' actions are likely to cause dilution and lessen the capacity of Indigo Vapor Enterprises' trademarks to identify and distinguish its products.

62. As a direct and proximate result of Defendants' actions, Indigo Vapor Enterprises has suffered and will continue to suffer damages in an amount presently unknown, but to be determined at the time of trial.

63. Indigo Vapor Enterprises has no adequate remedy at law for this wrongful conduct and is entitled to injunctive relief.

***Count V – Federal Cybersquatting***

***ACPA and Lanham Act (15 U.S.C. § 1125(d))***

64. Indigo Vapor Enterprises hereby re-alleges and incorporates by reference the allegations of all paragraphs above.

65. Defendants' actions constitute cyberpiracy in violation of 15 U.S.C. § 1125(d).

66. Defendants have adopted, registered, used, and continue to use a domain name, namely indigovaporcompany.com, that wholly incorporates Indigo Vapor Enterprises' "Indigo Vapor" trademarks. Defendants' website continues to divert traffic from Indigo Vapor Enterprises' website and injures the goodwill associated with Indigo

Vapor Enterprises' trademarks because of the unprofessional appearance of the Defendants' website.

67. Defendants' unauthorized registration and use of the infringing Domain Name has caused, and unless enjoined, will continue to cause irreparable injury to Indigo Vapor Enterprises and to the goodwill associated with Indigo Vapor Enterprises' trademarks.

68. By continuing to use the infringing Domain Name, Defendants have trafficked in and used a domain name that is confusingly similar to Indigo Vapor Enterprises' trademarks and its domain name, indigovapor.com.

69. Defendants registered, used, and continue to hold the infringing Domain Name with the bad faith intent to unlawfully attract customers for commercial purposes with the use of Indigo Vapor Enterprises' trademarks.

70. Defendants have used the infringing Domain Name with the intent to direct consumers to Defendants' site for commercial gain by creating a likelihood of confusion as to source, sponsorship, or endorsement of the website.

71. Defendants have no rights in the infringing Domain Name. Defendants have no trademark or other intellectual property rights in the infringing Domain Name.

72. Defendants are not making a bona fide noncommercial or fair use of Indigo Vapor Enterprises' trademarks.

73. Defendants' unauthorized continued use of the infringing Domain Name has caused, and unless enjoined, will continue to cause irreparable injury to Indigo Vapor Enterprises and to the goodwill associated with Indigo Vapor Enterprises' trademarks.

74. For Defendants' cyberpiracy, Indigo Vapor Enterprises is also entitled to recover treble damages, or statutory damages of \$100,000, costs, and attorney fees.

***Count VI – Common Law Trademark Infringement***

75. Indigo Vapor Enterprises hereby re-alleges and incorporates by reference the allegations of all paragraphs above.

76. Defendants have infringed, and are infringing, Indigo Vapor Enterprises' trademarks. Defendants are offering and selling their products, and advertising and marketing those products, in a manner that is likely to create confusion or misunderstanding as to source, sponsorship, affiliation, connection, association, or approval of products and services. Defendants' acts are also likely to improperly suggest that their products have the sponsorship or approval of Indigo Vapor Enterprises, or that Defendant's products are of a particular standard or quality, or otherwise create a likelihood of confusion or misunderstanding.

77. Defendants' acts constitute trademark infringement in violation of federal law and the common law of the State of Indiana and of the common law of other states in which Defendants have used Indigo Vapor Enterprises' marks.

78. Defendants' conduct has damaged Indigo Vapor Enterprises.

79. Indigo Vapor Enterprises therefore is entitled to injunctive relief and monetary damages.

***Count VII – Common Law Unfair Competition***

80. Indigo Vapor Enterprises hereby re-alleges and incorporates by reference the allegations of all paragraphs above.

81. Defendants' acts constitute unfair competition and passing off in violation of federal law, common law of the State of Indiana, and of the common law of the other states in which Defendants have marketed their products.



82. Defendants' conduct is without the authorization of Indigo Vapor Enterprises, and is intentional, willful, and with actual knowledge of the rights Indigo Vapor Enterprises has in the INDIGO VAPOR® (Stylized) and INDIGO VAPOR® trademarks and trade names.

83. By infringing upon the INDIGO VAPOR® (Stylized) and INDIGO VAPOR® trademarks and trade names and using the same and/or confusingly similar marks and other indicia to derive benefit, Defendants are unfairly trading upon and misappropriating for their own benefit the valuable goodwill, reputation, publicity, and business opportunities of Indigo Vapor Enterprises.

84. Defendants' conduct has damaged Indigo Vapor Enterprises.

85. Indigo Vapor Enterprises therefore is entitled to injunctive relief and monetary damages.

#### **PRAYER FOR RELIEF**

WHEREFORE, Indigo Vapor Enterprises respectfully prays that the Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

1. That Defendants and its or their officers, directors, employees, agents, subsidiaries, representatives, distributors, dealers, related companies, and all persons in active concert or participation with any of them are permanently enjoined and restrained from directly or indirectly:
  - a. Using "Indigo Vapor" as a trade name or service mark and from using any trademark, service mark, design, phrase, logo, trade name, or domain name that incorporates the marks INDIGO VAPOR® (Stylized) and INDIGO VAPOR®, or any other trademark, service mark, design,

phrase, logo, trade name, or domain name that is confusingly similar to any of Indigo Vapor Enterprises' trademarks;

- b. Using any of Indigo Vapor Enterprises' Registered Marks or engaging in any other conduct that creates a likelihood of injury to the business reputation of Indigo Vapor Enterprises or a likelihood of misappropriation of Indigo Vapor Enterprises' distinctive trademarks and the goodwill associated therewith;
  - c. Expressly or impliedly representing themselves, their businesses, or their products as affiliated, connected, or associated with or authorized, sponsored, or approved by Indigo Vapor Enterprises;
  - d. Passing off to the public that their businesses or their products are those of, or originate with, Indigo Vapor Enterprises or are associated with Indigo Vapor Enterprises;
  - e. Engaging in any other conduct that will cause or is likely to cause confusion, mistake, deception or misunderstanding as to the affiliation, connection, or association or origin, sponsorship, or approval of their businesses, products, or services with or by Indigo Vapor Enterprises;
  - f. Using any trade practices, including those complained of in this Complaint, that tend to unfairly compete with or injure Indigo Vapor Enterprises, its business and the goodwill appertaining thereto;
2. That Defendants be required to deliver for destruction all advertising and promotional materials, labels, brochures, business stationery, business cards, information sheets, posters, signs, website materials, and any and all other

- printed or graphic materials of any type that bear any confusingly similar imitation of Indigo Vapor Enterprises' trademarks;
3. That Defendants transfer to Indigo Vapor Enterprises all rights, title and interest in the domain name `indigovaporcompany.com` and to any other domain names that include the "Indigo Vapor" mark or any phrase confusingly similar to it;
  4. That Defendants be required to immediately remove and take down any and all content from the domain names that utilized "Indigo Vapor" or any other mark owned by Indigo Vapor Enterprises, and to immediately remove any and all content from other websites where Defendants have used or referenced the phrase "Indigo Vapor," including, but not limited to, Reddit and Facebook;
  5. That any web hosting entity remove and take down the infringing Domain Name or turn over control of the infringing Domain name to Indigo Vapor Enterprises;
  6. That Defendants be directed to file with the Court and serve on Indigo Vapor Enterprises, within thirty (30) days after entry of a final judgment, a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with the injunction;
  7. That Defendants be compelled to account to Indigo Vapor Enterprises for any and all profits and/or monies derived by them in connection with their unauthorized use of Indigo Vapor Enterprises' trademarks, and for all damages caused to Indigo Vapor Enterprises under 15 U.S.C. § 1117(b), and that Indigo Vapor Enterprises' award be trebled as provided for by 15 U.S.C. § 1117(b), or

- in the alternative, statutory damages under 15 U.S.C. § 1117(d) of \$100,000 per domain name found to be in violation of 15 U.S.C. § 1125(d);
8. That Defendants be ordered to pay Indigo Vapor Enterprises' damages on Indigo Vapor Enterprises' claims;
  9. That, in light of Defendants' willful and deliberate conduct, Indigo Vapor Enterprises be awarded punitive damages and the Court find that this is an "exceptional" case pursuant to 15 U.S.C. § 1117;
  10. That Defendants be required to pay to Indigo Vapor Enterprises the costs of this action and its reasonable attorney fees pursuant to 15 U.S.C. § 1117 and other applicable laws;
  11. That Indigo Vapor Enterprises be awarded such other relief as this Court may deem appropriate.

Dated: October 1, 2015

Respectfully submitted,

/s/ John A. Drake

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