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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

Muscle Flex, Inc., a California corporation

Plaintiff,

v.

Simon Property Group, L.P.,
Simon Property Group, Inc.,
Matt Murat Dagli,
New Purple LLC

Defendants.

Civil Action No. 1:18-cv-1140

Jury Trial Demanded

**COMPLAINT FOR TRADEMARK INFRINGEMENT,
UNFAIR COMPETITION, AND TRADEMARK DILUTION**

Plaintiff Muscle Flex, Inc. alleges as follows:

1. Plaintiff Muscle Flex owns the federally registered mark “World of Leggings” and has invested substantial time, energy, and money into its World of Leggings brand. Plaintiff’s website, worldofleggings.com, is the top Google search result for many searches related to “leggings” and “world,” has garnered 5.5 million visitors, 27 million views, and millions of dollars in sales across the United States.

2. Matt Dagli, Simon Mall Group, L.P., and Simon Mall Group, Inc. (together with New Purple, LLC, “Defendants”) have cooperated to open several stores under the name “Leggings World” in Simon properties across the Midwest and Northeast, including Indiana. Even after Mr. Dagli received—and ignored—a cease and desist letter from Muscle Flex in January 2018, Defendants have continued operating and promoting Leggings World stores in Simon Properties.

3. On February 16, the Patent and Trademark Office (“PTO”) informed Mr. Dagli that his applied-for mark, “Leggings World,” would cause a likelihood of confusion with Plaintiff’s mark, “World of Leggings.” In response to the PTO’s refusal, Mr. Dagli—acting through New Purple LLC, the entity that formally applied for the mark—abandoned his trademark application on March 11—but not before he, in his personal capacity as the named tenant on Simon leases, began a sales promotion with Simon, on February 28, for clothing at a Leggings World location in a Simon mall.

4. Despite abandoning the trademark application for “Leggings World” because it would cause a likelihood of confusion with Plaintiff’s federally registered mark, Mr. Dagli continues to operate Leggings World retail stores in Simon properties and, on information and belief, elsewhere.

5. When Muscle Flex complained of the infringement to Simon by letter dated March 29, 2018, Simon responded by removing instances of “Leggings World” from its website and digital directories inside its malls, and sending cease-and-desist letters to tenants operating under the “Leggings World” name in its properties.

6. Muscle Flex’s March 29 letter requested not only cessation of infringing activities, but also a full accounting of funds received that are attributable to use of the Leggings World mark. Simon has not indicated any willingness to provide such an accounting. Instead, Simon has stated: “Simon is willing to cooperate and do what it can to cause the cessation of any tenant’s infringing use of the LEGGINGS WORLD mark at any Simon property. Should Muscle Flex decide, however, to initiate formal litigation against Simon, it will have left Simon with no choice but to re-consider its position.” In other words, if Muscle Flex seeks that which it is entitled to—damages associated with Simon’s unauthorized use of a mark infringing Muscle Flex’s federally registered mark—then Simon will consider whether to cause more infringement of Muscle Flex’s federally registered mark.

7. Defendants’ trademark infringement and other wrongful acts are ongoing, are causing irreparable harm to Muscle Flex, and will continue unless enjoined by this Court.

8. Muscle Flex is bringing this case to recover damages for (among other things) trademark infringement and to stop Defendants from using the mark “Leggings World,” which the PTO has already found results in a likelihood of confusion with “World of Leggings.”

The Parties

9. Muscle Flex is a California corporation with its principal place of business in Los Angeles, California.

10. Muscle Flex owns and operates physical and online retail stores featuring leggings and other women’s clothing and sells its products across the United States under the name “World of Leggings.”

11. Defendant Simon Property Group, Inc. is a Delaware corporation that operates as a self-administered and self-managed real estate investment trust.

12. Simon Property Group, Inc.'s majority-owned subsidiary, Defendant Simon Property Group, L.P. (together with Simon Property Group, Inc., "Simon"), is a Delaware partnership that owns all of Simon's real estate properties and other assets.

13. Simon operates Simon Property Group, Inc. and Simon Property Group, L.P. as one business and operates substantially all of its business through Simon Property Group, L.P.

14. Simon owns, develops, and manages retail real estate properties—mostly malls and premium outlets. As of December 31, 2016, Simon owned or held an interest in 206 income-producing properties in the United States, including 108 malls and 67 premium outlets.

15. Defendant Matt Murat Dagli is an individual who primarily resides in Texas. He is the President of New Purple LLC ("New Purple"), a Texas limited liability company that served as the trademark applicant for the "Leggings World" mark. Mr. Dagli owns, operates, or manages, stores in Simon properties under the name "Leggings World," or is otherwise responsible for ownership, operation, and management through franchising or other agreements. Mr. Dagli signed, in his personal capacity, several leases for space in Simon properties to operate "Leggings World" stores—including a lease for property at Simon's College Mall in Bloomington, Indiana—and he personally owns, operates, or manages at least the Leggings World stores leased in his own name.

Jurisdiction and Venue

16. This is a civil action arising under the Lanham Act, Title 15, United States Code §§ 1051 et seq.

17. The Court has original subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338. This Court also has supplemental jurisdiction over Plaintiff's claims arising under state law under 28 U.S.C. § 1367, as those claims form part of the same case or controversy.

18. This Court has personal jurisdiction over Defendants because, among other things, Defendants are doing business in this state and in this judicial district, and a significant portion of the acts complained of herein occurred in this judicial district.

19. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because each Defendant either resides in this district or has substantial and continuous ties to this district.

Factual Allegations

20. Muscle Flex has operated under the “World of Leggings” name since at least as early as 2011 and owns United States Trademark Registration Number 4,188,135 for the mark “World of Leggings” for use in connection with “Retail Store and On-Line Retail Store Services Featuring Leggings, Shorts, Shirts, Lingerie and Workout Clothing.” A true and correct copy of the trademark registration is attached hereto as Exhibit 1. “World of Leggings” has been used in commerce continuously for a five-year period in connection with these services, is still in use, and is incontestable under 15 U.S.C. § 1065.

21. The “World of Leggings” mark is prima facie evidence of Muscle Flex’s exclusive right to use the registered trademark in commerce and of the validity and ownership of the mark. Muscle Flex is entitled to constructive use rights, including nationwide priority rights, as of the filing dates of the application that matured into the “World of Leggings” mark.

22. In addition to its statutory rights, Muscle Flex has common law rights to the “World of Leggings” mark by virtue of its continuous use of the mark in commerce in connection with the services described above.

23. Muscle Flex has used the “World of Leggings” mark in interstate commerce to indicate the source of Muscle Flex’s services since at least as early as 2011.

24. Muscle Flex has spent hundreds of thousands of dollars and substantial time advertising and marketing the “World of Leggings” mark and establishing the “World of Leggings” mark as an indicator of source, origin, and quality. “World of Leggings” is presently the top search

result on Google for “leggings” and “world” related searches, the World of Leggings website has garnered 5.5 million unique visitors and nearly 27 million views, and millions of dollars in sales are attributable to the “World of Leggings” brand.

25. On November 5, 2017, Defendant Matt Dagli, through New Purple LLC, filed a trademark application with the PTO for the mark “Leggings World.”

26. According to its trademark application, New Purple began selling leggings under the name “Leggings World” in 2014, and in 2017 began using “Leggings World” in connection with physical retail locations selling clothing.

27. Leggings World stores are operated in Simon-owned/managed properties. As of April 11, Leggings World stores were operating in the following Simon properties: Burlington Mall (Burlington, Massachusetts), College Mall (Bloomington, Indiana), Mall of Georgia (Buford, Georgia), Grove City Premium Outlets (Grove City, Pennsylvania), Pheasant Lane Mall (Nashua, New Hampshire), Livingston Mall (Livingston, New Jersey), the Mall at Rockingham Park (Salem, New Hampshire), and The Mall of New Hampshire (Manchester, New Hampshire) (the “Local Malls”). (Simon’s legally owns less than 100% of the malls in New Hampshire, but both remain managed by Simon.)

28. On or about January 16, 2018, Plaintiff Muscle Flex sent a cease-and-desist letter to New Purple, to the correspondence email addresses reflected on New Purple’s trademark application. (One or both of these email addresses—daglim25@hotmail.com and salesnewpurple@gmail.com—is controlled by Mr. Dagli.) Among other things, the letter stated that Muscle Flex is the owner of the “World of Leggings” mark and informed New Purple that “Leggings World” is, on its face, confusingly similar to Muscle Flex’s federally registered mark and that New Purple’s conduct amounted to trademark infringement. Neither New Purple nor Mr. Dagli ever responded.

29. On or about February 16, 2018, the PTO refused registration of New Purple's "Leggings World" mark because it found a likelihood of confusion between the "Leggings World" mark and Plaintiff's "World of Leggings" mark. The PTO found that "[t]he marks create the same commercial impression because of the common words, LEGGINGS and WORLD" and that they "have the same overall meaning." The PTO concluded: "Because the marks are similar, and because the goods and services are related, there is a likelihood of confusion as to the source of the goods and services."

30. After and despite receiving a cease and desist from Muscle Flex, Leggings World retail operations continued unabated. On February 28, 2018, Mr. Dagli and Simon together began a retail advertising promotion for the Leggings World at College Mall, "3 for \$30 entire store," using at least Simon's website. The sale period was listed as "Valid from February 28, 2018 to February 1, 2019."

31. On or about March 11, 2018, Mr. Dagli, through New Purple, abandoned the trademark application with the PTO. Despite the abandonment, Leggings World stores continue to operate in Simon properties. Simon advertised special hours on its website for the Leggings World at Grove City, for example, as recently as April 2, 2018.

32. On information and belief, Simon, through its employees, is specifically responsible for approving leases within the Local Malls for stores using the "Leggings World" mark and when providing other services that Simon knew, or should have known, would be used to infringe Muscle Flex's "World of Leggings" mark. Simon is also responsible for causing advertisements using the "Leggings World" mark to appear on its website, which, according to ICANN registrant data, is registered to Simon Property Group, L.P.

33. Simon manages every asset that it owns as if it is their only asset. Simon exercises authority over the leasing practices of the Local Malls, including by providing employees and resources and otherwise managing the Local Malls. For example, Burlington Mall's long-term leasing

manager also serves as the leasing manager for South Shore Plaza, and Burlington Mall's short-term leasing representative is also responsible for short-term leasing at Pheasant Lane Mall.

34. On information and belief, the managers and leasing managers for the Local Malls are Simon employees. Their email addresses, ending in "simon.com," reflect the identity of their employer, and some of these Simon employees serve as leasing managers for multiple Local Malls.

35. Simon profits directly from the wrongful conduct described in this complaint. For example, Simon collects rent from stores operating under the "Leggings World" mark. And, as a condition of many leases, Simon requires a portion of its tenants' sales to be paid to Simon. On information and belief, the Local Malls' leases with the Leggings World stores require a portion of sales to be paid to Simon.

36. Simon requires all employees, including the employees of its subsidiaries, to adhere to a "Code of Business Conduct and Ethics." This Code directs Simon employees to report the violation of any law, rule, or regulation—including violations related to intellectual property laws—to either the employee's immediate supervisor or Simon's General Counsel.

37. When Simon has disputes with a retailer with locations across many of the stores it owns and manages, the company brings suit against them in the name of Simon Property Group, L.P., opting to disregard the corporate form of its various subsidiaries.

38. Simon often includes in its leases a provision that limits the ability of tenant retail stores to change their branding, store name, or general business operations. For example, in multiple Simon-property leases in Florida, Simon's leases required that tenant's "business shall be conducted in Tenant's own name or under the [specified name] unless another name is previously approved in writing by Landlord." These leases further restrict tenant's use of premises to the primary business activity set forth in the lease. For further example, similar lease terms are present in a Simon-controlled lease in California, requiring tenant's "business [] be conducted under the Trade Name set forth in Article I unless another name is previously approved in writing."

39. On information and belief, similar trade-name provisions are present in Simon's leases with Mr. Dagli and those in privity with Mr. Dagli or New Purple, preventing or restricting the ability to operate under a different name.

40. Simon provides advertising and media promotion intended to drive consumer traffic to the Local Malls and individual businesses, including Leggings World stores, in the Local Malls. On information and belief, when Simon manages and spends promotional funding to drive such traffic, they collect a contribution from tenants and coordinate with tenants regarding the content of the advertising.

41. On information and belief, Simon also requires tenants, including Mr. Dagli and other Leggings World tenants, to participate in sales and special promotions sponsored by promotional funds and managed by Simon.

42. On information and belief, when Simon manages and spends funds on electronic, print, or outdoor advertising to benefit tenants, including the Leggings World tenants, they require a contribution from tenants. Simon—not the individual tenants—is primarily responsible for managing such advertising. Simon also profits from successful advertising because it collects a share of sales from many tenants. As a condition of a lease with a tenant, Simon is also purportedly authorized by the tenant to use the tenant's trade name and a brief description of the tenant's business in connection with the electronic, print, or outdoor advertising.

43. The "World of Leggings" mark and the business of Muscle Flex are presently known to all Defendants.

44. On information and belief, the "World of Leggings" mark and the business of Muscle Flex were known to New Purple and Mr. Dagli at the time he adopted the "Leggings World" mark and to all Defendants at the time the first "Leggings World" store opened in a Simon property.

45. On information and belief, the "World of Leggings" mark and the business of Muscle Flex were known to Simon when they entered into leases relating to "Leggings World" in

each of the Local Malls, and when they provided services related to advertising and promotion for Leggings World stores.

46. The “Leggings World” mark bears strong similarity to the “World of Leggings” mark.

47. Defendants have used and/or are using the “Leggings World” mark with services that are identical to or highly related to the services used by Muscle Flex.

48. Defendants have used and/or are using the “Leggings World” mark for services that dilute the “World of Leggings” mark.

49. Defendants have promoted and provided and/or are promoting and providing goods or services under the “Leggings World” mark in the same channels of trade used by Muscle Flex with “World of Leggings.”

50. Mr. Dagli/New Purple’s first commercial use of the “Leggings World” mark is much later than Muscle Flex’s first use of the “World of Leggings” mark in connection with the same services.

51. Mr. Dagli/New Purple’s use of the “Leggings World” mark and its other actions described herein are likely to cause confusion, deception and/or mistake in the marketplace, the relevant industry, and all channels of trade for Muscle Flex’s services, including the services listed on the “World of Leggings” registered trademark.

52. Mr. Dagli/New Purple and Simon’s use of the “Leggings World” mark and their actions described herein have been (and continue to be) deliberate, willful, and with disregard to the rights of Muscle Flex. This case is exceptional.

53. Muscle Flex has sustained and will continue to sustain irreparable injury as a result of Defendants’ conduct. Muscle Flex’s irreparable injury is not compensable solely by an award of monetary damages.

First Claim for Relief
Trademark Infringement – 15 U.S.C. § 1114(1)
(Direct against Mr. Dagli/New Purple; Contributory and Direct against Simon)

54. Muscle Flex re-alleges every allegation in the preceding paragraphs.

55. Defendants Mr. Dagli/New Purple and Simon's actions as described herein are likely to cause confusion, deception, or mistake.

56. Simon provided services to Mr. Dagli knowing, or having reason to know, that the services were used to infringe Muscle Flex's "World of Leggings" mark.

57. Defendants Mr. Dagli/New Purple and Simon's acts constitute use in commerce of a reproduction, counterfeit, copy or colorable imitation of registered trademarks, in connection with the sale, offering for sale, distribution or advertising of products, on or in connection with which such use is likely to cause confusion or to cause mistake or to deceive, in violation of 15 U.S.C. § 1114(1).

58. As a direct and proximate result of Defendants' acts, Muscle Flex has suffered and continues to suffer irreparable injury for which no adequate remedy exists at law.

Second Claim for Relief
Unfair Competition and False Designation of Origin – 15 U.S.C. § 1125(a)
(Direct against Mr. Dagli/New Purple; Contributory and Direct against Simon)

59. Muscle Flex re-alleges every allegation in the preceding paragraphs.

60. Defendants acts as alleged herein constitute, among other things, false designations of origin, false or misleading descriptions of fact, or false or misleading representations of fact which are likely to cause confusion or mistake, or to deceive the public as to the origin, sponsorship, or approval of the services of defendant, and otherwise constitute infringement and unfair competition in violation of 15 U.S.C. § 1125(a).

61. As a direct and proximate result of Defendants' acts, Muscle Flex has suffered and continues to suffer irreparable injury for which no adequate remedy exists at law.

**Third Claim for Relief
Trademark Dilution – 15 U.S.C. § 1125(c)
(Against All Defendants)**

62. Muscle Flex re-alleges every allegation in the preceding paragraphs.

63. The “World of Leggings” mark is distinctive and famous. The “World of Leggings” mark has been and continues to be extensively promoted and marketed nationwide. The “World of Leggings” mark has gained strong national public recognition and is eligible for protection against dilution.

64. Defendant Mr. Dagli/New Purple’s false and unauthorized use of an imitation of the “World of Leggings” mark in the advertising and promotion for its services dilutes the strength and value of the “World of Leggings” mark.

65. Defendants’ willful and deliberate use of the “World of Leggings” mark in the advertising and promotion for its services, which bear no relationship to Muscle Flex, tarnishes the “World of Leggings” mark.

66. Without injunctive relief, Muscle Flex has no means by which to control the continuing injury to its reputation and goodwill or of the continuing dilution of its trademark. Muscle Flex has been and will continue to be irreparably harmed. No amount of money damages can adequately compensate Muscle Flex if it loses the ability to control the use of its name, reputation, and goodwill through the false and unauthorized use of its trademark. Muscle Flex is entitled to injunctive relief prohibiting defendant from using the “World of Leggings” mark in conjunction with its services.

**Fourth Claim for Relief
Indiana Common Law Trademark Infringement
(Against All Defendants)**

67. Muscle Flex re-alleges every allegation in the preceding paragraphs.

68. Muscle Flex owns all rights, title, and interest in the “World of Leggings” mark, including all common law rights.

69. Defendants, without authorization from Muscle Flex, have used spurious designations that are identical to, or substantially indistinguishable from, the “World of Leggings” mark.

70. The foregoing acts of the Defendants are intended to cause, have caused, and are likely to continue to cause confusion, mistake, and deception among consumers, the public and the trades as to whether Defendants’ counterfeit products originate from, or are affiliated with, sponsored by, or endorsed by Muscle Flex.

71. On information and belief, Defendants have acted with knowledge of Muscle Flex’s ownership of the “World of Leggings” mark and with deliberate intention or willful blindness to unfairly benefit from the goodwill associated with the “World of Leggings” mark.

72. Defendants’ acts constitute trademark infringement in violation of the common law of Indiana.

73. On information and belief, Defendants have made and will continue to make substantial profits and gains to which they are not in law or equity entitled.

74. On information and belief, Defendants will continue their infringing acts, unless restrained by this Court.

75. Defendants’ acts have damaged and will continue to damage Muscle Flex, and Muscle Flex has no adequate remedy at law.

76. The conduct herein complained of was extreme and was inflicted on Muscle Flex in reckless disregard for Muscle Flex’s rights. The conduct was in bad faith, harmful to Plaintiff, and as such supports an award of exemplary and punitive damages in an amount sufficient to punish Defendants and deter such conduct in the future.

77. In light of the foregoing, Muscle Flex is entitled to injunctive relief prohibiting Defendants from infringing the “World of Leggings” mark, and to recover all damages, including attorneys’ fees, that Muscle Flex has sustained and will sustain, and all gains, profits, and advantages

obtained by Defendants as a result of their infringing acts alleged above in an amount not yet known, and the costs of this action.

**Sixth Claim for Relief – Unjust Enrichment
(Against All Defendants)**

78. Muscle Flex re-alleges every allegation in the preceding paragraphs.

79. The acts complained of above constitute unjust enrichment of Defendants at Muscle Flex's expense in violation of the common law of the State of Indiana.

PRAYER FOR RELIEF

Plaintiff Muscle Flex prays for judgment in its favor against Defendants, and each Defendant, as follows:

- A) For damages in an amount to be proved at trial;
- B) For judgment that the "World of Leggings" mark has been and continues to be infringed by Defendants and their use of "Leggings World";
- C) For judgment that the "World of Leggings" mark has been and continues to be diluted by Defendants and their use of "Leggings World";
- D) For an order preliminarily and permanently enjoining Defendants and each Defendant's agents, employees, servants, officers, directors, successors in interest, heirs, assigns and all persons, firms or corporations, acting by or under their authority, in active concert or privity or in participation with it from using the "World of Leggings" mark or any confusingly similar marks in any way or any other any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake, or deception therewith, including without limitation the "Leggings World" mark, in connection with or in the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing, developing, or manufacturing of Defendants' business, and services;

- E) For an order requiring Defendants to recall from all its offices and all others, whether persons, firms, or corporations, acting by or under their authority, in active concert or privity or in participation with it, any material containing the “World of Leggings” mark in any way and any word, words, phrases, symbols, logos, etc. which would create a likelihood of confusion, mistake and/or deception therewith, including without limitation the “Leggings World” mark, in connection with or in the marketing, offering, selling, disposing of, licensing, leasing, transferring, displaying, advertising, reproducing, developing, or manufacturing of defendant’s business and services;
- F) For an order preliminarily and permanently enjoining Defendants, and each Defendant’s officers, agents, employees, and all persons acting in concert with them, from infringing the “World of Leggings” mark and/or engaging in further such unlawful acts and from reaping any additional commercial advantage from its misappropriation of the rights of Muscle Flex and all affiliated and related companies of Muscle Flex in the “World of Leggings” mark;
- G) For an order requiring Defendants to destroy, at their sole and exclusive cost, all materials in their possession or under their control that contain infringements of the “World of Leggings” mark; and
- H) For such other or further relief as the Court may deem proper.

April 13, 2018

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DEMAND FOR JURY TRIAL

Plaintiff Muscle Flex hereby demands a jury trial pursuant to Federal Rule of Civil Procedure 38.

April 13, 2018

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