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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

1.4G HOLDINGS, LLC, a Nevada limited-  
liability company,

Plaintiff;

v.

NORTH CENTRAL INDUSTRIES, INC., an  
Indiana corporation; GREAT GRIZZLY,  
INC., an Indiana corporation; and R.  
BROWN, INC., a Montana corporation;

Defendants.

Case No. 1:23-cv-0037

**DEMAND FOR JURY TRIAL**

**COMPLAINT**

1.4g Holdings, LLC (“Plaintiff” or “1.4g”), by and through its counsel, complains as follows against Defendants North Central Industries, Inc. (“NCI”), Great Grizzly, Inc. (“Great Grizzly”), and R. Brown, Inc. (“R. Brown”; collectively, with NCI and Great Grizzly, “Defendants”), on information and belief, that the following are and have been true at all times relevant to this lawsuit unless otherwise specifically indicated to the contrary:

**PARTIES**

1. 1.4g is a Nevada limited-liability company with its principal place of business in the State of Nevada.
2. NCI is an Indiana corporation with its principal place of business in Delaware County, Indiana.
3. Great Grizzly is an Indiana corporation with its principal place of business in the State of Montana.

4. R. Brown is a Montana corporation with its principal place of business in the State of Montana.

### **JURISDICTION**

5. This Court has original jurisdiction over Plaintiff's First through Fifth Causes of Action (the "Federal Causes") pursuant to 15 U.S.C. § 1121(a), 15 U.S.C. § 4, and 28 U.S.C. § 1331, because the Federal Causes arise under the Lanham Act.

6. This Court has supplemental jurisdiction over Plaintiff's Sixth Cause of Action (the "State Cause") pursuant to 28 U.S.C. § 1338(b) and 1367 because the State Cause is so related to the Federal Causes as to form part of the same case or controversy as the Federal Causes pursuant to Article III of the United States Constitution.

7. This Court has personal jurisdiction over NCI and Great Grizzly because NCI and Great Grizzly are corporations domiciled within the State of Indiana.

8. This Court has personal jurisdiction over R. Brown because R. Brown has continuous and systematic contacts with the State of Indiana through R. Brown's business relationships with NCI and Great Grizzly.

9. This Court has personal jurisdiction over R. Brown because R. Brown regularly conducts business within the State of Indiana, including, without limitation, contracting on an ongoing basis with Indiana corporations NCI and Great Grizzly for the use of the misappropriated intellectual property at issue in this case.

10. This Court has personal jurisdiction over R. Brown because Great Grizzly and R. Brown share corporate officers, are engaged in the same enterprise, and use the same assets for the completion of that enterprise.

11. This Court's exercise of personal jurisdiction over R. Brown is supported by the fact that the same person, Mark Brown, simultaneously serves as treasurer of Great Grizzly and president of R. Brown.

12. This Court's exercise of personal jurisdiction over R. Brown is supported by the fact that R. Brown's website (the "R. Brown Website") is located at the address <greatgrizzly.net> and depicts the Great Grizzly logo at the top of the homepage.

13. This Court's exercise of personal jurisdiction over R. Brown is supported by the fact that the R. Brown Website states that R. Brown is "an exclusive dealer of Great Grizzly products."

14. This Court's exercise of personal jurisdiction over R. Brown is supported by the fact that the Contact button on the R. Brown Website is labeled "Contact Great Grizzly."

### VENUE

15. Venue is proper in this Court because NCI resides in Delaware County, Indiana, within the Indianapolis Division of this Court.

### GENERAL ALLEGATIONS

16. 1.4g is the owner of the federally registered mark TIKI, registration number 5214187, registered on May 30, 2017, for use with "fireworks" (the "Tiki Mark").

17. 1.4g is the owner of the federally registered mark GHOST, registration number 5546560, registered on August 21, 2018, for use with "fireworks" (the "Ghost Mark").

18. 1.4g is the owner of the federally registered mark XL, registration number 5152562, registered on February 28, 2018, for use with "fireworks" (the "XL Mark").

19. 1.4g is the owner of the mark GHOST and design, as depicted on **Exhibit 1**.

20. The Ghost Design Mark has been in use in commerce by Plaintiff since at least as early as May 21, 2017.

21. 1.4g is the owner of trade dress that includes, for use with fireworks, on a brightly colored background, a cartoon image of a Polynesian “tiki god”, proximate to the word “TIKI”, with facial features on the “tiki god” that include:

- a. prominent downward-sloping eyebrows aimed at the bridge of the “tiki god”’s nose;
- b. brightly colored pupil-less eyes;
- c. a colored decorative object between the bottoms of the “tiki god”’s eyebrows at the bridge of the “tiki god”’s nose;
- d. a mouth with brightly colored, thick lips;
- e. prominent white teeth; and
- f. an angry-appearing facial expression (all such elements collectively the “Tiki Trade Dress”).<sup>1</sup>

22. All of the elements of the Tiki Trade Dress have been in use in commerce by Plaintiff since at least as early as May 19, 2019.

23. The Tiki Trade Dress is distinctive within the consumer fireworks field and has taken on secondary meaning due to the use of the Tiki Trade Dress by Plaintiff.

24. The Tiki Trade Dress has taken on secondary meaning due to the extensive time and tens of thousands of dollars spent by Plaintiff using the Tiki Trade Dress in commerce in the marketing and sale of products.

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<sup>1</sup> A depiction of the Tiki Trade Dress is attached hereto as **Exhibit 2**.

25. The Tiki Trade Dress has taken on secondary meaning, as evidenced by Defendant's intentional copying of the Tiki Trade Dress.

26. Defendants have used and are using the Tiki Mark in commerce for use with fireworks.

27. Defendants have used and are using the Ghost Mark in commerce for use with fireworks.

28. Defendants have used and are using the XL Mark in commerce for use with fireworks.

29. Defendants have used and are using a mark in commerce for use with fireworks and fireworks-related products consisting of the following elements: the word GHOST, displayed in proximity to cartoon white flying "ghosts", each of whose "head" portion takes up most of the "ghost"'s form, with black geometric "cut-out"-appearing eyes and mouth, no extremities, and an uneven "bottom"/"back" edge evoking the appearance of a ragged bedsheet (the "Ghost Nine-Shot Mark").<sup>2</sup>

30. The Ghost Nine-Shot Mark is likely to be confused with the Ghost Design Mark as an indicator of source.

31. Defendants have used and are using packaging design in commerce that includes the following elements, for use with fireworks and fireworks-related products: on a brightly colored background, a cartoon image of a Polynesian "tiki god", proximate to the word "TIKI", with facial features on the "tiki god" including:

- a. prominent downward-sloping eyebrows aimed at the bridge of the "tiki god"'s nose;

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<sup>2</sup> A depiction of the Ghost Nine-Shot Mark is attached hereto as **Exhibit 3**.

- b. brightly colored pupil-less eyes;
- c. a colored decorative object between the bottoms of the “tiki god”’s eyebrows at the bridge of the “tiki god”’s nose;
- d. a mouth with brightly colored, thick lips;
- e. prominent white teeth; and
- f. an angry-appearing facial expression (all such elements collectively the “Tiki Bombs Packaging”).<sup>3</sup>

32. The Tiki Bombs Packaging is likely to be confused with the Tiki Trade Dress as an indicator of source.

33. Defendants’ use of, without limitation, the 1.4g Marks and the Tiki Bombs Packaging constitute misappropriations of the 1.4g Commercial Property.

34. Defendants were fully aware of Plaintiff’s ownership of the 1.4g Marks at the time that Defendant commenced use of the 1.4g Marks in commerce (the “Mark Infringements”).

35. Defendants were fully aware of Plaintiff’s ownership of the Tiki Trade Dress at the time that Defendants commenced using the Tiki Bombs Packaging in commerce (the “Trade Dress Infringement”).

36. Defendants were fully aware of Plaintiff’s ownership of the 1.4g Commercial Property at the time Defendants commenced misappropriating same (the “Commercial Property Misappropriation”).

37. Defendants willfully and knowingly engaged in the Mark Infringements.

38. Defendants willfully and knowingly engaged in the Trade Dress Infringement.

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<sup>3</sup> A depiction of the Tiki Bombs Packaging is attached hereto as **Exhibit 4**.

39. Defendants willfully and knowingly engaged in the Commercial Property Misappropriation.

40. Defendants have never been granted a license to use any of the 1.4g Commercial Property.

41. Defendants have never paid 1.4g any amounts for the use of any of the 1.4g Commercial Property.

**FIRST CAUSE OF ACTION**  
**REGISTERED MARK INFRINGEMENT UNDER 15 U.S.C. § 1114(a)(1)**  
**(TIKI MARK)**

42. Plaintiff realleges and incorporates by reference every allegation set forth above.

43. Defendants are using and have used the Tiki Mark (as used by Defendant, the “Infringing Tiki Mark”) in commerce in connection with the sale, offering for sale, distribution, and advertising of goods without Plaintiff’s consent (the “Infringing Tiki Mark Use”).’

44. The Infringing Tiki Mark Use is likely to cause confusion, cause mistake, or deceive customers and the public with respect to the goods offered in commerce by Defendants.

45. Defendants have willfully engaged in the Infringing Tiki Mark Use with knowledge that the Infringing Tiki Mark Use constitutes infringement of the Tiki Mark.

46. The Infringing Tiki Mark Use has damaged and will continue to damage the reputation and goodwill of Plaintiff established in connection with the Tiki Mark, in violation of 15 U.S.C. § 1114.

47. Plaintiff has sustained actual damages as a direct and proximate result of the Infringing Tiki Mark Use, and Defendants are liable to Plaintiff for up to three times the amount of those actual damages pursuant to 15 U.S.C. § 1117.

48. Defendants have profited as a direct and proximate result of the Infringing Tiki Mark Use, and Defendants are liable to Plaintiff for the amount of those profits pursuant to 15 U.S.C. § 1117.

49. Plaintiff has incurred costs of suit in connection with bringing this action, and Defendants are liable to Plaintiff for those costs of suit pursuant to 15 U.S.C. § 1117.

50. Defendants utilized the Tiki Mark without authorization in derogation of Plaintiff's exclusive rights under 15 U.S.C. § 1114.

51. Defendants undertook Defendants' infringement of the Tiki Mark in a manner that makes this an exceptional case pursuant to 15 U.S.C. § 1117, and Plaintiff is entitled to Plaintiff's attorney's fees incurred in this action.

**SECOND CAUSE OF ACTION**  
**REGISTERED MARK INFRINGEMENT UNDER 15 U.S.C. § 1114(A)(1)**  
**(GHOST MARK)**

52. Plaintiff realleges and incorporates by reference every allegation set forth above.

53. Defendants are using and have used the Ghost Mark (as used by Defendant, the "Infringing Ghost Mark") in commerce in connection with the sale, offering for sale, distribution, and advertising of goods without Plaintiff's consent (the "Infringing Ghost Mark Use").

54. The Infringing Ghost Mark Use is likely to cause confusion, cause mistake, or deceive customers and the public with respect to the goods offered in commerce by Defendants.

55. Defendants have willfully engaged in the Infringing Ghost Mark Use with knowledge that the Infringing Ghost Mark Use constitutes infringement of the Ghost Mark.

56. The Infringing Ghost Mark Use has damaged and will continue to damage the reputation and goodwill of Plaintiff established in connection with the Ghost Mark, in violation of 15 U.S.C. § 1114.



57. Plaintiff has sustained actual damages as a direct and proximate result of the Infringing Ghost Mark Use, and Defendants are liable to Plaintiff for up to three times the amount of those actual damages pursuant to 15 U.S.C. § 1117.

58. Defendants have profited as a direct and proximate result of the Infringing Ghost Mark Use, and Defendants are liable to Plaintiff for the amount of those profits pursuant to 15 U.S.C. § 1117.

59. Plaintiff has incurred costs of suit in connection with bringing this action, and Defendants are liable to Plaintiff for those costs of suit pursuant to 15 U.S.C. § 1117.

60. Defendants utilized the Ghost Mark without authorization in derogation of Plaintiff's exclusive rights under 15 U.S.C. § 1114.

61. Defendants undertook Defendants' infringement of the Ghost Mark in a manner that makes this an exceptional case pursuant to 15 U.S.C. § 1117, and Plaintiff is entitled to Plaintiff's attorney's fees incurred in this action.

**THIRD CAUSE OF ACTION**  
**REGISTERED MARK INFRINGEMENT UNDER 15 U.S.C. § 1114(A)(1)**  
**(XL MARK)**

62. Plaintiff realleges and incorporates by reference every allegation set forth above.

63. Defendants are using and have used the XL Mark (as used by Defendant, the "Infringing XL Mark") in commerce in connection with the sale, offering for sale, distribution, and advertising of goods without Plaintiff's consent (the "Infringing XL Mark Use").

64. The Infringing XL Mark Use is likely to cause confusion, cause mistake, or deceive customers and the public with respect to the goods offered in commerce by Defendants.

65. Defendants have willfully engaged in the Infringing XL Mark Use with knowledge that the Infringing XL Mark Use constitutes infringement of the XL Mark.

66. The Infringing XL Mark Use has damaged and will continue to damage the reputation and goodwill of Plaintiff established in connection with the XL Mark, in violation of 15 U.S.C. § 1114.

67. Plaintiff has sustained actual damages as a direct and proximate result of the Infringing XL Mark Use, and Defendants are liable to Plaintiff for up to three times the amount of those actual damages pursuant to 15 U.S.C. § 1117.

68. Defendants have profited as a direct and proximate result of the Infringing XL Mark Use, and Defendants are liable to Plaintiff for the amount of those profits pursuant to 15 U.S.C. § 1117.

69. Plaintiff has incurred costs of suit in connection with bringing this action, and Defendants are liable to Plaintiff for those costs of suit pursuant to 15 U.S.C. § 1117.

70. Defendants utilized the XL Mark without authorization in derogation of Plaintiff's exclusive rights under 15 U.S.C. § 1114.

71. Defendants undertook Defendants' infringement of the XL Mark in a manner that makes this an exceptional case pursuant to 15 U.S.C. § 1117, and Plaintiff is entitled to Plaintiff's attorney's fees incurred in this action.

**FOURTH CAUSE OF ACTION**  
**MARK INFRINGEMENT AND FALSE DESIGNATION OF ORIGIN UNDER 15 U.S.C.**  
**§ 1125**  
**(GHOST DESIGN MARK)**

72. Plaintiff realleges and incorporates by reference every allegation set forth above.

73. The Ghost Nine-Shot Mark is a colorable imitation of the Ghost Design Mark.

74. Defendants are using and have used the Ghost Nine-Shot Mark (as used by Defendants, in commerce in connection with the sale, offering for sale, distribution, and advertising of goods without Plaintiff's consent, the "Infringing Ghost Nine-Shot Mark Use").

75. The Infringing Ghost Nine-Shot Mark Use is likely to cause confusion, cause mistake, or deceive customers and the public with respect to the goods offered in commerce by Defendants.

76. Defendants have willfully engaged in the Infringing Ghost Nine-Shot Mark Use with knowledge that the Infringing Ghost Nine-Shot Mark Use constitutes infringement of the Ghost Design Mark.

77. The Infringing Ghost Nine-Shot Mark Use has damaged and will continue to damage the reputation and goodwill of Plaintiff established in connection with the Ghost Design Mark.

78. Plaintiff has sustained actual damages as a direct and proximate result of the Infringing Ghost Nine-Shot Mark Use, and Defendants are liable to Plaintiff for up to three times the amount of those actual damages pursuant to 15 U.S.C. § 1117.

79. Defendants have profited as a direct and proximate result of the Infringing Ghost Nine-Shot Mark Use, and Defendants are liable to Plaintiff for the amount of those profits pursuant to 15 U.S.C. § 1117.

80. Plaintiff has incurred costs of suit in connection with bringing this action, and Defendants are liable to Plaintiff for those costs of suit pursuant to 15 U.S.C. § 1117.

81. Defendants undertook the Infringing Ghost Nine-Shot Mark Use in a manner that makes this an exceptional case pursuant to 15 U.S.C. § 1117, and Plaintiff is entitled to Plaintiff's attorney fees incurred in this action.

**FIFTH CAUSE OF ACTION**  
**TRADE DRESS INFRINGEMENT AND FALSE DESIGNATION OF ORIGIN UNDER**  
**15 U.S.C. § 1125**  
**(TIKI TRADE DRESS)**

82. Plaintiff realleges and incorporates by reference every allegation set forth above.

83. The Tiki Trade Dress is, as a whole, not functional.

84. The Tiki Trade Dress holds secondary meaning sufficient to allow association of the Tiki Trade Dress with a particular source.

85. The Tiki Bombs Packaging is so similar to the Tiki Trade Dress as to create a likelihood of confusion and a false designation of origin under the Lanham Act.

86. Defendants are using and have used the Tiki Bombs Packaging (as used by Defendants, in commerce in connection with the sale, offering for sale, distribution and advertising of goods without Plaintiff's consent, the "Tiki Bombs Packaging Use").

87. The Tiki Bombs Packaging Use is likely to cause confusion, cause mistake, or deceive customers and the public with respect to the goods offered in commerce by Defendants.

88. Defendant has willfully engaged in the Tiki Bombs Packaging Use with knowledge that the Tiki Bombs Packaging Use constitutes infringement of the Tiki Trade Dress.

89. The Tiki Bombs Packaging Use has damaged and will continue to damage the reputation and goodwill of Plaintiff established in connection with the Tiki Trade Dress.

90. Plaintiff has sustained actual damages as a direct and proximate result of the Tiki Bombs Packaging Use, and Defendants are liable to Plaintiff for up to three times the amount of those actual damages pursuant to 15 U.S.C. § 1117.

91. Defendants have profited as a direct and proximate result of the Tiki Bombs Packaging Use, and Defendants are liable to Plaintiff for the amount of those profits pursuant to 15 U.S.C. § 1117.

92. Plaintiff has incurred costs of suit in connection with bringing this action, and Defendants are liable to Plaintiff for those costs of suit pursuant to 15 U.S.C. § 1117.

93. Defendants undertook Defendants' infringement of the Tiki Trade Dress in a manner that makes this an exceptional case pursuant to 15 U.S.C. § 1117, and Plaintiff is entitled to Plaintiff's attorney's fees incurred in this action.

**SIXTH CAUSE OF ACTION**  
**MISAPPROPRIATION OF COMMERCIAL PROPERTIES UNDER INDIANA**  
**COMMON LAW**

94. Plaintiff realleges and incorporates by reference every allegation set forth above.

95. Plaintiff has invested significant time, effort and money in creating, publicizing, and protecting the 1.4g Commercial Property, and developing valuable goodwill arising and associated with the 1.4g Commercial Property, including, without limitation, investments of hundreds of thousands of dollars in financial outlays and time value in website creation and maintenance, search engine optimization, mark creation, development and protection efforts, and advertising and promotional efforts.

96. Plaintiff has preserved Plaintiff's right to license, encumber or sell the 1.4g Commercial Property to individuals or entities while Plaintiff has expended substantial resources to increase the value of such potential licensing, encumbrance, or sales.

97. Defendants misappropriated the 1.4g Commercial Property through the use of the 1.4g Commercial Property for Defendants' enrichment without appropriately compensating Plaintiff.

98. Plaintiff has sustained and will continue to sustain damages as a direct and proximate result of the Commercial Property Misappropriation, and Defendants are liable to Plaintiff for the amount of those present and future damages.

99. Plaintiff has been required to retain an attorney to prosecute this action, and Defendants are liable to Plaintiff for Plaintiff's attorney fees to the extent allowed by law.

100. Plaintiff has incurred costs of suit in connection with bringing this action, and Defendants are liable to Plaintiffs for those costs of suit.

**REQUEST FOR RELIEF**

Plaintiff requests judgment against Defendants as follows:

- A. For Plaintiff's damages resulting from Defendants' infringement of the Tiki Mark;
- B. For Defendants' profits resulting from Defendants' infringement of the Tiki Mark;
- C. For Plaintiff's damages resulting from Defendants' infringement of the Ghost Mark;
- D. For Defendants' profits resulting from Defendants' infringement of the Ghost Mark;
- E. For Plaintiff's damages resulting from Defendants' infringement of the XL Mark;
- F. For Defendants' profits resulting from Defendants' infringement of the XL Mark;
- G. For Plaintiff's damages resulting from Defendants' infringement of the Ghost Design Mark and the false designation of origin resulting from same;
- H. For Defendants' profits resulting from Defendants' infringement of the Ghost Design Mark and the false designation of origin resulting from same;
- I. For Plaintiff's damages resulting from Defendants' infringement of the Tiki Trade Dress and the false designation of origin resulting from same;
- J. For Defendants' profits resulting from Defendants' infringement of the Tiki Trade Dress and the false designation of origin resulting from same;
- K. For damages resulting from Defendants' misappropriation of the 1.4g Commercial Property;
- L. For equitable relief, which may include, without limitation, the reasonable value of

the benefit conferred on Defendants;

M. For preliminary and permanent injunctive relief enjoining Defendants from using any of the 1.4g Commercial Property in commerce;

N. For impoundment and disposal of all infringing articles in Defendants' possession;

O. For attorney fees as allowed by law;

P. For costs of suit;

Q. For pre-and post-judgment interest as allowed by law;

R. For any other relief this Court deems appropriate.

Respectfully submitted this 5th day of January, 2023.

**BOSE MCKINNEY & EVANS LLP**

/s/ Philip R. Zimmerly

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*\* Pro Hac Vice Motion Forthcoming*

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