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CAFEPRESS.COM, INC.

11
12 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14
15 CAFEPRESS.COM, INC., a Delaware
corporation,

16 Plaintiff,

17 v.
18

19 REPUBLICAN NATIONAL
20 COMMITTEE,

21 Defendant.
22

Case No. _____

COMPLAINT FOR DECLARATORY
RELIEF

23 1. In this case, plaintiff CafePress.com, Inc. (“CafePress”) seeks
24 protection against a threat of trademark litigation by defendant Republican National
25 Committee (“RNC”), which seeks to prevent supporters and opponents of the
26 Republican Party from selling t-shirts, stickers, and other items that display a
27 variety of expressive designs. Users of CafePress have created designs that praise
28

1 Republicans, the Republican Party and Republican candidates, as well as attack
2 them, using both the acronym “GOP” and an elephant as symbols of the Republican
3 Party or of Republican principles more generally. The RNC has registered
4 trademarks in the acronym “GOP” as well as in a design of an elephant with three
5 stars across its side. The RNC has warned CafePress that it is infringing RNC’s
6 trademarks by allowing its users to publish and sell t-shirts and other items bearing
7 designs that express opinions about the Republican Party through the use of the
8 acronym “GOP” and through a variety of elephant designs, and has threatened to
9 sue for treble damages. Because the acronym “GOP” and the depiction of an
10 elephant are generic ways to identify Republican candidates and principles, because
11 the challenged designs make fair use of the RNC’s trademarks, and because the
12 First Amendment protects the right of all citizens to express their views about
13 Republican candidates and principles through the use of that acronym and symbol,
14 the Court should enter a judgment declaring that CafePress does not violate RNC’s
15 trademark rights by printing t-shirts and other materials bearing those designs and
16 by allowing its users to sell such items through its website.

17 **JURISDICTION**

18 2. This action arises under the laws of the United States. This
19 Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. § 1121
20 and 28 U.S.C. §§ 1331, 1337, and 1338.

21 3. The RNC operates its commercially interactive website
22 <www.rnc.org> which allows individuals to make donations, purchase products,
23 and enroll in political education programs offered by RNC. On information and
24 belief, RNC has a reasonable expectation that RNC’s goods and services are to be
25 purchased and used by California residents in this District.

26 4. Upon information and belief, RNC conducts business within the
27 State of California, specifically in this District, and has a reasonable expectation of
28 being sued in California, affording this Court personal jurisdiction over RNC.

1 11. For example, a user can upload his digital image and create a
2 sticker or t-shirt with the image displayed as artwork on the sticker or t-shirt. The
3 user can then purchase the sticker or t-shirt he created for himself or offer the
4 sticker or t-shirts for sale to others through his online store, hosted by CafePress.
5 Although the stickers and t-shirts are visible as products within the user’s online
6 store and the CafePress marketplace, there is no physical inventory of the specific
7 customized product; it is *only* created once an order has been placed for it. Once
8 the order for the specific product has been placed, CafePress prints the digital
9 image onto the blank products (*e.g.* the sticker or t-shirt) and ships the product to
10 the user’s customer. CafePress provides a wide range of blank products (buttons,
11 yard signs, mugs, etc.) that users can customize with digital images.

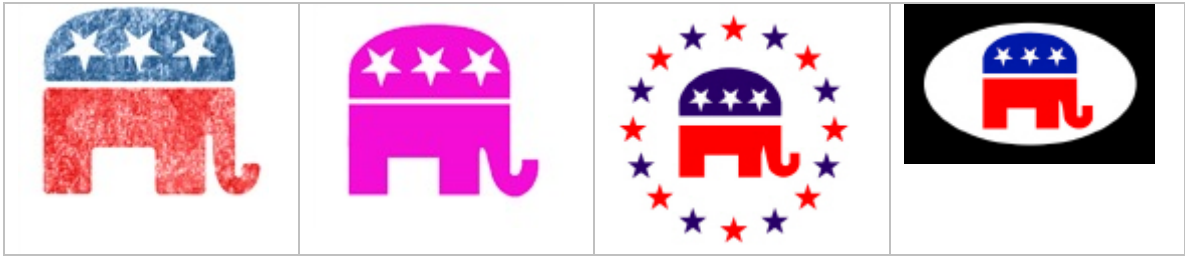
12 **B. RNC and Its Threatened Lawsuit**

13 12. Many users of CafePress have opinions about the Republican Party,
14 and about its candidates and principles, and have created thousands of different
15 designs to express varying opinions about the Republican Party, Republican
16 candidates, and Republican principles.

17 13. In order to express their views about the Republican Party, some
18 CafePress users employ an elephant design or the acronym “GOP”, which stands
19 for the Grand Old Party. The term “Grand Old Party” has been in common usage
20 since approximately 1876 to refer to groupings of Republicans, and the
21 abbreviation “GOP” dates back to approximately 1884. The symbol of the elephant
22 has been commonly used to refer to Republican principles, groupings of
23 Republicans, and Republican candidates and office holders since Thomas Nast first
24 portrayed Republicans as an elephant in a political cartoon in 1874.

25 14. Some CafePress users have expressed general support for the
26 Republican Party or Republican principles by using the symbol of an elephant with
27 three stars across its side entirely or largely by itself, as in the following examples:
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15. Some CafePress users have expressed support for Republican candidates by combining the symbol of an elephant with the name of a Republican candidate, as in the following examples:



16. Some CafePress users have expressed support for the Republican Party or Republican principles by combining the symbol of an elephant and/or the acronym "GOP" with other words or other images, as in the following examples:



17. Some CafePress users have combined the symbol of an elephant with the name of a Democratic candidate or a characteristic associated with Democrats, either to express support of or scorn for Democrats, as in the following examples:



18. Some CafePress users have expressed disdain for Republicans or the

1 Republican Party by combining the symbol of an elephant and/or the acronym
2 “GOP” with other words and images, as in the following examples:



8 19. Since 1997, RNC has had a registered trademark in the acronym
9 “GOP”, and since 1995, it has had a registered trademark in an image of an
10 elephant in red, white and blue with three stars across the top.

11 20. On February 11, 2008, RNC, through its Chief Counsel, Sean
12 Cairncross, sent a cease and desist letter to CafePress, identifying RNC as the
13 owner of trademark registrations in the acronym “GOP” and the name “Grand Old
14 Party, as well as the “Official Elephant Logo,” and attaching a list of 51 locations
15 on the CafePress website where allegedly infringing uses of these marks were
16 located. **Exhibit A.** These locations included each of the designs identified in
17 paragraphs 14 through 18, as well as other similar designs. Each of the allegedly
18 offending designs, excerpted from the website locations identified in the attachment
19 to Exhibit A, is included in **Exhibit B.** Mr. Cairncross concluded his letter by
20 inviting CafePress to contact him with any questions.

21 21. In response to RNC’s cease and desist letter of February 11, 2008,
22 CafePress made several attempts, by both email and fax, to contact RNC to discuss
23 its contentions. When RNC did not respond to these inquiries, CafePress responded
24 by letter dated March 7, 2008, asserting that both First Amendment and trademark
25 laws protect the use of both the symbol of the elephant and the acronym “GOP” as
26 part of political speech about the Republican Party, and urging that RNC discuss
27 the matter with CafePress. A copy of this letter is attached as **Exhibit C.**

28 22. On March 11, 2008, RNC responded to CafePress’ letter by reasserting

1 RNC's trademark rights, and threatening to seek treble damages, but without
2 responding to CafePress' First Amendment and trademark concerns. A copy of this
3 letter is attached as **Exhibit D**.

4 23. On April 2, 2008, CafePress responded to RNC's March 11, 2008,
5 letter, reasserting CafePress' defenses under both the First Amendment and
6 trademark law as construed in light of First Amendment protections for non-
7 commercial speech, citing cases upholding these arguments, and urging RNC to
8 discuss these concerns to determine whether the parties could reach a compromise.
9 A copy of this letter is attached as **Exhibit E**.

10 24. On May 8, 2008, RNC responded with a letter rejecting CafePress'
11 arguments on the ground that CafePress is a for profit entity that sells t-shirts and
12 other merchandise, concluding that its uses of the trademarks are, at most,
13 commercial speech and hence unprotected. The letter asserted that the uses of
14 CafePress users infringe and dilute RNC's trademarks, and again threatened treble
15 damages in light of CafePress' continued support for its users' uses in the face of
16 "several notices from the RNC." A copy of this letter is attached as **Exhibit F**.

17 25. On June 27, 2008, CafePress contacted RNC to discuss its complaints
18 one last time; however, RNC refused to withdraw its claims against CafePress. As
19 of this date, there have been no further discussions between the parties, and RNC's
20 threat looms over CafePress' business and that of its users.

21 26. CafePress does not want to undergo the risk of being subjected to
22 further claims for damages, and requests that the Court declare that CafePress is
23 entitled to display and permit its users to sell items bearing those images.

24
25 **CLAIM FOR DECLARATION OF NO
TRADEMARK INFRINGEMENT OR DILUTION**

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27 27. CafePress hereby incorporates by reference the statements and
28 allegations contained in Paragraphs 1-26 as if fully stated herein.

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Dated: July 16, 2008

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