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10	Attorneys for Plaintiff CAFEPRESS.COM, INC.		
11 12	UNITED STATES DISTRICT COURT		
13	CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION		
14			
15	CAFEPRESS.COM, INC., a Delaware corporation,	Case No	
16 17 18	Plaintiff, v.	COMPLAINT FOR DECLARATORY RELIEF	
19 20	REPUBLICAN NATIONAL COMMITTEE,		
21	Defendant.		
22			
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		
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Republicans, the Republican Party and Republican candidates, as well as attack them, using both the acronym "GOP" and an elephant as symbols of the Republican Party or of Republican principles more generally. The RNC has registered trademarks in the acronym "GOP" as well as in a design of an elephant with three stars across its side. The RNC has warned CafePress that it is infringing RNC's trademarks by allowing its users to publish and sell t-shirts and other items bearing designs that express opinions about the Republican Party through the use of the acronym "GOP" and through a variety of elephant designs, and has threatened to sue for treble damages. Because the acronym "GOP" and the depiction of an elephant are generic ways to identify Republican candidates and principles, because the challenged designs make fair use of the RNC's trademarks, and because the First Amendment protects the right of all citizens to express their views about Republican candidates and principles through the use of that acronym and symbol, the Court should enter a judgment declaring that CafePress does not violate RNC's trademark rights by printing t-shirts and other materials bearing those designs and by allowing its users to sell such items through its website.

JURISDICTION

- 2. This action arises under the laws of the United States. This Court has subject matter jurisdiction over this matter pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1337, and 1338.
- 3. The RNC operates its commercially interactive website <www.rnc.org> which allows individuals to make donations, purchase products, and enroll in political education programs offered by RNC. On information and belief, RNC has a reasonable expectation that RNC's goods and services are to be purchased and used by California residents in this District.
- 4. Upon information and belief, RNC conducts business within the State of California, specifically in this District, and has a reasonable expectation of being sued in California, affording this Court personal jurisdiction over RNC.

- 5. RNC directed threats of litigation over the trademark claims on which CafePress seeks a declaratory judgment to CafePress in California.
 - 6. Venue is proper under 28 U.S.C. §§ 1391(b) in this case because, on information and belief, RNC is subject to personal jurisdiction in this District and/or a substantial part of the events or omissions giving rise to the claim occurred in this District.

PARTIES

- 7. CafePress is a Delaware corporation having its principal place of business in San Mateo, California.
- 8. On information and belief, RNC is an unincorporated political association with a place of business in Washington, District of Columbia.

FACTS

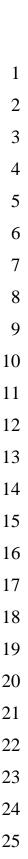
A. CafePress' Business

- 9. CafePress is a privately owned company based in San Mateo, California. It is an internet service provider offering an automated service that allows its users, individuals and businesses, to set up virtual online shops and feature and offer for sale their products in a virtual online marketplace. The shops created by its users and the virtual online marketplace are hosted by CafePress.
- 10. CafePress provides a venue and capabilities for individuals, organizations and businesses to create, buy and sell customized merchandise online using the company's unique print-on-demand and e-commerce services. Currently, CafePress has over 6 million users who have created more than 150 million products on more than 90 customizable items ranging from apparel, yard signs, stickers, buttons, bags, prints, posters, cards, home and office accessories to music and data CDs and books. In a nutshell, CafePress provides blank merchandise that its users customize with their own images, which are then sold to members of the public who want to communicate whatever message those images express.

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

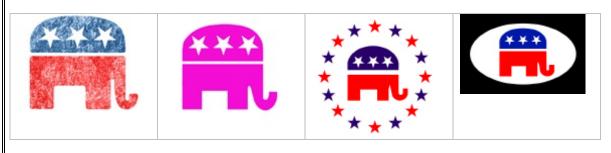
B. RNC and Its Threatened Lawsuit

- 12. Many users of CafePress have opinions about the Republican Party, and about its candidates and principles, and have created thousands of different designs to express varying opinions about the Republican Party, Republican candidates, and Republican principles.
- 13. In order to express their views about the Republican Party, some CafePress users employ an elephant design or the acronym "GOP", which stands for the Grand Old Party. The term "Grand Old Party" has been in common usage since approximately 1876 to refer to groupings of Republicans, and the abbreviation "GOP" dates back to approximately 1884. The symbol of the elephant has been commonly used to refer to Republican principles, groupings of Republicans, and Republican candidates and office holders since Thomas Nast first portrayed Republicans as an elephant in a political cartoon in 1874.
- 14. Some CafePress users have expressed general support for the Republican Party or Republican principles by using the symbol of an elephant with 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:

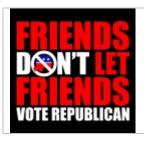






18. Some CafePress users have expressed disdain for Republicans or the

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









- 19. Since 1997, RNC has had a registered trademark in the acronym "GOP", and since 1995, it has had a registered trademark in an image of an elephant in red, white and blue with three stars across the top.
- 20. On February 11, 2008, RNC, through its Chief Counsel, Sean Cairncross, sent a cease and desist letter to CafePress, identifying RNC as the owner of trademark registrations in the acronym "GOP" and the name "Grand Old Party, as well as the "Official Elephant Logo," and attaching a list of 51 locations on the CafePress website where allegedly infringing uses of these marks were located. **Exhibit A**. These locations included each of the designs identified in paragraphs 14 through 18, as well as other similar designs. Each of the allegedly offending designs, excerpted from the website locations identified in the attachment to Exhibit A, is included in **Exhibit B**. Mr. Cairncross concluded his letter by inviting CafePress to contact him with any questions.
- 21. In response to RNC's cease and desist letter of February 11, 2008, CafePress made several attempts, by both email and fax, to contact RNC to discuss its contentions. When RNC did not respond to these inquiries, CafePress responded by letter dated March 7, 2008, asserting that both First Amendment and trademark laws protect the use of both the symbol of the elephant and the acronym "GOP" as part of political speech about the Republican Party, and urging that RNC discuss the matter with CafePress. A copy of this letter is attached as **Exhibit C**.
 - 22. On March 11, 2008, RNC responded to CafePress' letter by reasserting

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

- 23. On April 2, 2008, CafePress responded to RNC's March 11, 2008, letter, reasserting CafePress' defenses under both the First Amendment and trademark law as construed in light of First Amendment protections for non-commercial speech, citing cases upholding these arguments, and urging RNC to discuss these concerns to determine whether the parties could reach a compromise. A copy of this letter is attached as **Exhibit E**.
- 24. On May 8, 2008, RNC responded with a letter rejecting CafePress' arguments on the ground that CafePress is a for profit entity that sells t-shirts and other merchandise, concluding that its uses of the trademarks are, at most, commercial speech and hence unprotected. The letter asserted that the uses of CafePress users infringe and dilute RNC's trademarks, and again threatened treble damages in light of CafePress' continued support for its users' uses in the face of "several notices from the RNC." A copy of this letter is attached as **Exhibit F**.
- 25. On June 27, 2008, CafePress contacted RNC to discuss its complaints one last time; however, RNC refused to withdraw its claims against CafePress. As of this date, there have been no further discussions between the parties, and RNC's threat looms over CafePress' business and that of its users.
- 26. CafePress does not want to undergo the risk of being subjected to further claims for damages, and requests that the Court declare that CafePress is entitled to display and permit its users to sell items bearing those images.

CLAIM FOR DECLARATION OF NO TRADEMARK INFRINGEMENT OR DILUTION

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

- 28. Based on the allegations described above and RNC's claims for damages, CafePress has a reasonable apprehension of being sued for trademark infringement, dilution and related claims by RNC for its and its users' fair use of the acronym "GOP" and/or various elephant designs in a non-trademark descriptive and ornamental manner.
- 29. CafePress now seeks a declaratory judgment from this Court that the use of the acronym "GOP" and/or various elephant designs on apparel, mugs, signs, posters, stickers, buttons, cards, prints and other expressive mediums on CafePress' website does not infringe, dilute, is not likely to dilute any trademark rights that RNC may have in the acronym "GOP" or the elephant design and such use does not violate any other rights of RNC, and does not damage RNC in any way.
- 30. CafePress now seeks a declaratory judgment that it and its users have neither infringed, nor diluted RNC's trademarks, and that it is not in violation of 15 U.S.C. § 1114, nor of 15 U.S.C. §§ 1125(a) or (c) nor of any similar state law, or any law whose violation RNC may assert through counterclaims.
- 31. CafePress now seeks a declaratory judgment that the elephant and the acronym "GOP" are generic terms that refer to individual Republicans, Republican groups, and Republican principles, and not specifically to RNC.
- 32. CafePress now seeks a declaratory judgment that any claims that it may have violated federal or state trademark laws are barred by the First Amendment to the United States Constitution, and by principles of fair use, including nominative fair use and parody under 15 U.S.C. §§ 1115(b)(4) and 1115(c)(3)(A), and ornamental use. Specifically, CafePress users are not using the designs of elephants or the term "GOP" as trademarks or otherwise as an indicator of source.

PRAYER FOR RELIEF

WHEREFORE, CafePress prays that with respect to its claim, that this Court enter a Declaratory Judgment against RNC as follows:

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3	Dated: July 16, 2008 GREC Public 1600	Citizen Litigation Group
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8	Dr.: /a	/ Iill M. Piatrini
9	By: /s/ Jil	/ Jill M. Pietrini l M. Pietrini
10	A 44 o mm	one for Plaintiff
11	CAFE	eys for Plaintiff PRESS.COM, INC.
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