

David Donahue (*ddonahue@fzlj.com*)
Jason D. Jones (*jjones@fzlj.com*)
Daniel M. Nuzzaci (*dnuzzaci@fzlj.com*)
FROSS ZELNICK LEHRMAN & ZISSU, P.C.
151 West 42nd Street, 17th Floor
New York, New York 10036
Phone: (212) 813-5900

Counsel for Plaintiff Polar Music International A.B.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

POLAR MUSIC INTERNATIONAL A.B.,

Plaintiff,

v.

HANDSHAKE LTD., TAL ENTERTAINMENT
LTD., JAMES STUART LITTLEWOOD, and
TODD LITTLEWOOD,

Defendants.

Case No. _____

COMPLAINT

Plaintiff Polar Music International A.B. (“Plaintiff”), by its undersigned attorneys, for its Complaint against Defendants Handshake Ltd. (“Handshake”), TAL Entertainment Ltd. (“TAL Entertainment”), James Stuart Littlewood, and Todd Littlewood (collectively, “Defendants”), alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action asserting claims for trademark counterfeiting and infringement, dilution, unfair competition, and cybersquatting to halt the brazen attempt by Defendants to trade on the goodwill and cachet of the internationally-famous and world-renowned musical group ABBA.

2. Plaintiff owns the famous, registered, and incontestable ABBA trademark and service mark (the “ABBA Mark”), which Plaintiff, its predecessors, and its licensees have used for decades in connection with musical sound recordings and related merchandise for the musical group ABBA.

3. Defendants are trading on the goodwill and cachet associated with the famous ABBA mark by promoting and performing live and recorded performances by a musical act called ABBA MANIA, which exclusively performs songs by ABBA, and by owning and operating the website associated with the domain name *abbamania.com*. Defendants market the performances under the ABBA MANIA mark (the “Infringing ABBA MANIA Mark”) on their respective websites, social media pages, and YouTube.

4. To halt Defendants’ parasitic and bad-faith conduct, Plaintiff brings this action on the following grounds: (i) counterfeiting of a federally registered trademark in violation of Section 32(1) of the U.S. Trademark Act of 1946, as amended (“Lanham Act”), 15 U.S.C. § 1114(1); (ii) infringement of a federally registered trademark in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1); (iii) unfair competition and false advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (iv) dilution in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c); (v) cybersquatting in violation of Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d); (vi) unfair competition in violation of New York common law; (vii) dilution in violation of N.Y. Gen. Bus. Law § 360-*l*; and (viii) use of a name with intent to deceive in violation of N.Y. Gen. Bus. Law § 133. Plaintiff seeks injunctive relief, statutory damages, damages, Defendants’ profits, attorney’s fees and expenses—all pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117—and such other relief as the Court deems just and proper.

THE PARTIES

5. Plaintiff Polar Music International A.B. is a joint stock company (aktiebolag) duly organized and existing under the laws of Sweden with a principal place of business in Stockholm, Sweden.

6. Upon information and belief, Defendant Handshake Ltd. is a private limited company existing under the laws of the United Kingdom with a registered office address at Ship Canal House, 98 King Street, Manchester, England M2 4WU.

7. Upon information and belief, Defendant TAL Entertainment Ltd. is a private limited company existing under the laws of the United Kingdom with a registered office address at Vt. Accountancy, Unit E5, Telford Road, Bicester, England OX26 4LD.

8. Upon information and belief, Defendant James Stuart Littlewood is an individual residing in the United Kingdom with an address at Burnedge House Burnedge Lane, Grasscroft, Oldham, Lancashire, England OL4 4EB.

9. Upon information and belief, Defendant Todd Littlewood is an individual residing in the United Kingdom with an address at Vt. Accountancy, Unit E5, Telford Road, Bicester, England OX26 4LD.

JURISDICTION AND VENUE

10. The Court has original jurisdiction over the subject matter of this action pursuant to Section 39 of the Lanham Act, 15 U.S.C. § 1121, because this action arises from Defendants' unauthorized and unlawful use of the Infringing ABBA MANIA Mark, which infringes upon Plaintiff's trademark rights in the ABBA Mark. The Court also has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) & (b) because this action presents a federal question under the Lanham Act. The Court has supplemental jurisdiction over the related state law claims

pursuant to Section 1367(a) of the Judicial Code, 28 U.S.C. § 1367(a).

11. The Court has personal jurisdiction over Defendants pursuant to N.Y. C.P.L.R. §§ 302(a)(1)-(3) because, upon information and belief, Defendants (i) transact business within New York State by offering live musical performances and concert services therein, including a musical performance that is scheduled to take place in this judicial district (namely, in Middletown, New York) in February 2022 and for which tickets are already on sale to consumers in New York; (ii) have engaged in tortious conduct within New York State, including through the marketing, promotion, advertising, sale, and/or offering for sale of services under the Infringing ABBA MANIA Mark that are offered in New York State; (iii) have engaged in tortious conduct outside New York State causing injury within this judicial district and state, including through the marketing, promotion, advertising, sale, and/or offering for sale of services under the Infringing ABBA MANIA Mark that are targeted at New York consumers; (iv) regularly do and solicit business within New York State and have derived substantial revenue from services rendered therein; and (v) expect or reasonably should expect their acts to have consequences within this judicial district and state and derive substantial revenue from interstate or international commerce.

12. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) because a substantial part of the events giving rise to the claims asserted herein occurred in this District and because Defendants are subject to this Court's personal jurisdiction with respect to this action.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

A. Plaintiff and Its Famous ABBA Mark

13. ABBA is a world-renowned Swedish pop group consisting of band members Agnetha Fältskog, Björn Ulvaeus, Benny Andersson, and Anni-Frid Lyngstad that was formed in Stockholm, Sweden in 1972.

14. Since the band's founding, Plaintiff has been the corporate entity responsible for ABBA's affairs, including the production and release of its music; the arranging and promotion of its tours; and the ownership, administration, and licensing of its intellectual property—including, without limitation, the famous ABBA Mark.

15. ABBA achieved nearly instantaneous and meteoric fame when the group won the Eurovision Song Contest in 1974 with the hit song "Waterloo." By 1976, ABBA had firmly established themselves as one of the most popular musical groups in the world. Over the course of the band's career, Plaintiff released nine albums under the ABBA Mark and charted twenty singles on the United States' Billboard Hot 100, fourteen of which made the top forty. Four of those singles reached the top ten in the United States, including "Dancing Queen" and "Take a Chance on Me," which were certified gold for sales of over one million copies each.

16. The ABBA Mark has appeared in connection with all of the albums and singles released by Plaintiff for ABBA. To date, Plaintiff has sold almost 400 million ABBA records worldwide, making ABBA one of the best-selling musical groups of all time. ABBA's success resulted in the group being inducted into the Rock and Roll Hall of Fame in 2010.

17. The ABBA Mark also has appeared in connection with all of ABBA's musical concerts, tours, and on all the accessories and merchandise sold in connection with those events, including t-shirts, posters, souvenirs, and on other similar merchandise licensed by Plaintiff.

18. The group's success is not limited to musical sound recordings. In 1999, ABBA's music was adapted into the musical titled *Mamma Mia!*—which ran on Broadway from October 2001 through September 2015 and which has toured all over the world. A film version of the *Mamma Mia!* musical starring Meryl Streep, Amanda Seyfried, Pierce Brosnan, Colin Firth, and Stellan Skarsgård was released in 2008. The film went on to become one of the highest-grossing films in the United States that year, leading to a sequel released in 2018 entitled *Mamma Mia! Here We Go Again*, which likewise featured ABBA's music.

19. ABBA's success has not gone unnoticed by the courts. As early as 1983, the United States Court of Appeals for the Federal Circuit explained that ABBA is a musical group that “has been extremely successful in the United States and throughout the world.” *In re Polar Music Int'l AB*, 221 U.S.P.Q. 315, 316 (Fed. Cir. 1983).

20. Plaintiff (including its predecessors-in-interest and licensees) has for many years continuously used—and is currently using—the ABBA Mark in interstate and foreign commerce in connection with entertainment-related goods and services and a wide array of promotional merchandise. Indeed, all of the phenomenally successful entertainment goods and services mentioned above were offered in connection with the ABBA Mark.

21. Plaintiff owns the domain name *abbasite.com* and operates a website at this domain name to promote and offer for sale entertainment-related goods and services and a wide array of promotional merchandise under the ABBA Mark.

22. The ABBA Mark is an inherently distinctive and strong trademark that is entitled to a broad scope of protection.

23. As a result of Plaintiff's investment of time, effort, and resources to promote ABBA and the extensive, exclusive, and continuous use of the ABBA Mark—and by virtue of

the quality of the goods and services offered thereunder—consumers have come to associate the ABBA Mark as exclusively identifying Plaintiff’s goods and services. As such, the ABBA Mark has developed extensive consumer recognition and has become a famous mark in the United States and throughout the world. Today, the ABBA Mark is one of Plaintiff’s most valuable intellectual property assets and represents enormous goodwill.

24. As a testament to ABBA’s enduring fame, there has been extensive news coverage in recent years relating to ABBA’s new forthcoming digital entertainment experience, which celebrates the approaching 50th anniversary of the band’s founding. To promote the project, ABBA has recorded—and Plaintiff will release—several new songs, which will be featured in a pre-recorded television special that is set to air in 2022, with a tour featuring holographic images of ABBA’s members to follow.

25. To further protect its rights in the ABBA Mark, Plaintiff has secured and maintains several federal trademark registrations for the ABBA Mark in connection with a variety of goods and services, including the following:

Mark	Reg. No.	Reg. Date	Goods and Services
ABBA	1,072,394	8/30/1977	IC 41: Musical entertainment services by a vocal and instrumental group
ABBA	1,072,398	8/30/1977	IC 41: Musical entertainment services by a vocal and instrumental group
ABBA	3,389,319	11/18/2003	IC 21: Porcelain and earthenware beverage glassware IC 25: T-shirts, and sweaters
ABBA	3,862,613	10/19/2010	IC 9: Pre-recorded audio tapes, discs and cassettes, video tapes, discs and cassettes, digital audio and audio video tapes and discs, CDs and DVDs and phonograph records featuring music and entertainment; theatrical and musical sound and video recordings; downloadable ring tones, music, MP3 files, graphics, images and videos for wireless communication devices in the field of music and

			entertainment; downloadable music, MP3 files, graphics, images and videos in the field of music and entertainment
ABBA	4,125,830	4/10/2012	IC 16: Books and magazines in the fields of music, entertainment, art and/or culture; address books; appointment books; calendars; greeting cards; post cards; pen and pencil cases; pencil sharpeners; pens; pencils; date books; bumper stickers; decals; note pads; stickers; posters; trading cards; stationery
ABBA	4,347,054	6/4/2013	IC 35: computerized on-line ordering services in the field of music; computerized online retail store services in the field of music; computerized on-line gift ordering services which matches the gift giver's requirements with the gift recipient's wants and needs; on-line retail store services featuring downloadable pre-recorded music and audio-visual content featuring music and music-related entertainment and clothing; organization of promotions using audio-visual media; preparing audio-visual displays in the field of music; providing information about the goods and services of others via a global computer network; retail store services available through computer communications and interactive television featuring CD's, DVD's

26. The above registrations are valid, subsisting, and in full force and effect.

Moreover, Plaintiff's registrations have become incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065, and therefore serve as conclusive evidence of the validity of the mark, of Plaintiff's ownership of the mark, and of Plaintiff's exclusive right to use the mark in connection with the goods and services identified in the registrations. *See* 15 U.S.C. § 1115(b).

27. Plaintiff's federal trademark registrations also place others, including Defendants, on constructive notice of Plaintiff's rights in the ABBA Mark. *See* 15 U.S.C. § 1072.

B. Defendants' Misappropriation of the ABBA Mark

28. Defendants are trading on the goodwill and cachet of the famous ABBA Mark by using the Infringing ABBA MANIA Mark to market, promote, and sell tickets to live musical performances featuring an ABBA cover band.

29. Defendants include the term “official” and “original” in many of their marketing materials, website pages, and social media handles, which gives consumers the impression that there is some kind of association, affiliation, or sponsorship between ABBA and ABBA MANIA.

30. Defendants promote their live musical performances and concerts using the Infringing ABBA MANIA Mark on their respective websites, on social media, and on YouTube.

31. In connection with their infringing activities, Defendants have registered and are using the domain name *abbamania.com* that incorporates Plaintiff's ABBA Mark in its entirety (the “Infringing Domain Name”). Defendants operate a website associated with the Infringing Domain Name where they promote their services under the Infringing ABBA MANIA Mark.

32. The ABBA MANIA website associated with the Infringing Domain Name advertises that the ABBA MANIA 2021 USA Tour will take place through fall 2021 and/or early 2022, with “more dates to follow.” Upon information and belief, the ABBA MANIA tour will have a performance in Middletown, New York, at the Paramount Theatre in February 2022. *See <https://middletownparamount.showare.com/eventperformances.asp?evt=127>*. Upon information and belief, tickets for this New York performance went on sale on September 17, 2021, and are currently on sale.

33. Defendants have not obtained written consent from Plaintiff or any representative of Plaintiff to use the ABBA Mark or Infringing ABBA MANIA Mark, or to register or operate the Infringing Domain Name.

34. The goods and services offered by Defendants under the Infringing ABBA MANIA Mark are not approved by Plaintiff or any representative of Plaintiff.

35. Defendants' use of the Infringing ABBA MANIA Mark and registration and use of the Infringing Domain Name began long after Plaintiff began using the ABBA Mark and long after the ABBA Mark became exclusively associated with Plaintiff and famous in the United States.

36. When offering goods and services under the Infringing ABBA MANIA Mark, Defendants target consumers who are familiar with—and who are customers of—Plaintiff's goods and services offered under the ABBA Mark.

37. Upon information and belief, Defendants had actual knowledge of Plaintiff's exclusive rights in the ABBA Mark when they adopted the Infringing ABBA MANIA Mark and registered the Infringing Domain Name, and they are aware that use of the Infringing ABBA MANIA Mark and the Infringing Domain Name violates Plaintiff's rights. Upon information and belief, Defendants are using a counterfeit of the ABBA Mark to illegally trade on and benefit from the recognition and goodwill of Plaintiff's ABBA Mark.

38. On June 17, 2021, Plaintiff sent a cease and desist letter to Defendants Handshake and TAL Entertainment (the "Cease and Desist Letter"), a copy of which is attached hereto as **Exhibit A**. The Cease and Desist letter set forth the foregoing facts and asserted claims for federal trademark infringement, unfair competition, dilution, and related state law claims.

39. On October 11, 2021, Plaintiff sent a follow-up letter to Defendants' counsel regarding Plaintiff's claims and, in an attempt to amicably resolve this dispute, explained how Defendants could properly use the phrase "ABBA Tribute" in a non-confusing manner to describe their tribute act so long as the actual name of the tribute act did not include the word ABBA. But Defendants refused to comply and cease use of the name ABBA MANIA.

40. Notwithstanding the fact that Defendants have been on actual notice of Plaintiff's rights, Defendants have continued to promote and offer goods and services bearing the Infringing ABBA MANIA Mark.

C. Injury to Plaintiff Resulting from Defendants' Infringing Conduct

41. Defendants' unauthorized use of the Infringing ABBA MANIA Mark and Infringing Domain Name for commercial purposes is damaging Plaintiff.

42. Defendants' unauthorized use of the Infringing ABBA MANIA Mark and the Infringing Domain Name is (i) likely to falsely suggest an association, affiliation, or sponsorship between Plaintiff and Defendants or between the goods and services of Plaintiff and Defendants; and (ii) likely to continue to create confusion, since consumers will incorrectly assume that Defendants' ABBA MANIA services are authorized or endorsed by, or otherwise associated or connected with those of Plaintiff.

43. Defendants' use of the Infringing ABBA MANIA Mark and the Infringing Domain Name is in bad-faith and is intentionally fraudulent, malicious, willful, and wanton.

44. Defendants' unauthorized acts as described herein have caused and will continue to cause irreparable damage to Plaintiff's business and goodwill unless restrained by this Court.

FIRST CLAIM FOR RELIEF
TRADEMARK COUNTERFEITING, 15 U.S.C. § 1114(1)

45. Plaintiff repeats the allegations set forth in Paragraphs 1 through 44 as if fully set forth herein.

46. The ABBA Mark has been used continuously and/or registered by Plaintiff since a date prior to any date on which Defendants can rely for any claim of rights in the Infringing ABBA MANIA Mark.

47. The earliest date upon which Defendants can rely in support of any claimed rights in the Infringing ABBA MANIA Mark is long after the use, registration, and acquisition of rights in the ABBA Mark by Plaintiff. As such, Plaintiff's rights in the ABBA Mark are prior and superior to any rights Defendants may claim in the Infringing ABBA MANIA Mark. The continued use of the Infringing ABBA MANIA Mark is inconsistent with Plaintiff's prior rights in and statutory grant of exclusivity of use of the ABBA Mark.

48. The Infringing ABBA MANIA Mark is identical with or substantially indistinguishable from the ABBA Mark, since it incorporates the ABBA Mark in its entirety. Defendants' addition of the term MANIA does not serve a source identifying function or otherwise distinguish the Infringing ABBA MANIA Mark from the ABBA Mark since MANIA is descriptive of the purportedly high-energy live musical performance and concert services offered by Defendants. Moreover, Defendants' use of the term "official" and "original" in connection with the Infringing ABBA MANIA Mark gives consumers the impression that the Infringing ABBA MANIA Mark is associated or affiliated with Plaintiff and the ABBA Mark.

49. The services offered by Defendants under the Infringing ABBA MANIA Mark are identical to both the services offered by Plaintiff under the ABBA Mark and the services for which the ABBA Mark is registered.

50. The services offered by Defendants under the Infringing ABBA MANIA Mark are targeted towards the same consumers who purchase services offered by Plaintiff under the ABBA Mark.

51. Defendants' infringement of the ABBA Mark is willful, in bad faith, and intended to trade on the goodwill and cachet of Plaintiff's ABBA Mark.

52. Because the Infringing ABBA MANIA Mark incorporates the federally-registered ABBA Mark in its entirety without Plaintiff's consent and is used in connection with services that are identical to those provided and registered by Plaintiff under the ABBA Mark, the Infringing ABBA MANIA Mark constitutes a "counterfeit mark" under Section 34(d)(1)(B) of the Lanham Act, 15 U.S.C. § 1116(d)(1)(B).

53. Defendants' continued use of the Infringing ABBA MANIA Mark constitutes counterfeiting and is likely to cause confusion, cause mistake, or deceive the public into the false belief that the services offered by Defendants under the Infringing ABBA MANIA Mark come from or are otherwise sponsored by or connected with Plaintiff in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

54. Defendants' aforementioned conduct is causing irreparable injury to Plaintiff's goodwill and reputation, and Defendants' continued use of the Infringing ABBA MANIA Mark will both damage Plaintiff as well as deceive and threaten harm to the public unless the conduct is permanently enjoined by this Court.

55. Plaintiff has no adequate remedy at law.

SECOND CLAIM FOR RELIEF
FEDERAL TRADEMARK INFRINGEMENT, 15 U.S.C. § 1114(1)

56. Plaintiff repeats the allegations set forth in Paragraphs 1 through 44 as if fully set forth herein.

57. Based on Plaintiff's prior rights in the ABBA Mark, the strength and fame of the ABBA Mark, the similarity of the ABBA Mark and the Infringing ABBA MANIA Mark, the identity and/or relatedness of the parties' respective goods and services, the overlap in the parties' targeted consumers, and Defendants' bad-faith adoption of the Infringing ABBA MANIA Mark, consumers are likely to be deceived into falsely believing that the services offered by Defendants under the Infringing ABBA MANIA Mark originate from or are otherwise associated with or endorsed by Plaintiff, or that there is some relationship between Plaintiff and Defendants or the goods and services of Plaintiff and the services of Defendants, all to Plaintiff's injury and harm.

58. Defendants' continued use of the Infringing ABBA MANIA Mark constitutes infringement of the federally-registered ABBA Mark and is likely to cause confusion, cause mistake, or deceive the public into the false belief that the services offered by Defendants under the Infringing ABBA MANIA Mark come from or are otherwise sponsored by or connected with Plaintiff in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

59. Defendants' aforementioned conduct is causing irreparable injury to Plaintiff's goodwill and reputation, and Defendants' continued use of the Infringing ABBA MANIA Mark will both damage Plaintiff as well as deceive and threaten harm to the public unless the conduct is permanently enjoined by this Court.

60. Plaintiff has no adequate remedy at law.

THIRD CLAIM FOR RELIEF
FEDERAL UNFAIR COMPETITION AND FALSE ADVERTISING, 15 U.S.C. § 1125(a)

61. Plaintiff repeats the allegations set forth in Paragraphs 1 through 44 as if fully set forth herein.

62. Defendants' use of the Infringing ABBA MANIA Mark in connection with services that are identical and/or highly related to the goods and services offered by Plaintiff under the ABBA Mark constitutes a false designation of origin and a false representation as to the origin of Defendants' services.

63. Defendants' use of the Infringing ABBA MANIA Mark in connection with such services is likely to cause confusion, cause mistake, or deceive the public as to the source of Defendants' services and is likely to create the false impression that those services are approved, authorized, sponsored, endorsed, licensed by, or affiliated with Plaintiff.

64. Defendants' use of the Infringing ABBA MANIA Mark misrepresents the nature, characteristics, and/or qualities of Defendants' services.

65. Defendants' conduct is willful, in bad faith, and intended to trade on the goodwill and cachet of Plaintiff. Accordingly, Defendants' actions constitute unfair competition and false advertising in violation of Sections 43(a)(1)(A) and 43(a)(1)(B) of the Lanham Act, 15 U.S.C. §§ 1125(a)(1)(A) and (B).

66. Defendants' aforementioned conduct is causing irreparable injury to Plaintiff's goodwill and reputation, and Defendants' continued conduct will damage Plaintiff as well as deceive and threaten harm to the public unless the conduct is permanently enjoined by this Court.

67. Plaintiff has no adequate remedy at law.

FOURTH CLAIM FOR RELIEF
FEDERAL DILUTION, 15 U.S.C. § 1125(c)

68. Plaintiff repeats the allegations set forth in Paragraphs 1 through 44 as if fully set forth herein.

69. Plaintiff's ABBA Mark is a distinctive, federally registered trademark. As a result of Plaintiff's extensive, continuous, and exclusive use of the ABBA Mark in connection with

various goods and services, the ABBA Mark has become famous and is widely recognized among the consuming public as a designation of source of Plaintiff's goods and services.

70. The ABBA Mark became famous long before Defendants' infringing activities commenced.

71. Defendants' commercial use of the Infringing ABBA MANIA Mark for services that are not sold by, affiliated with, or sponsored by Plaintiff has diluted and is likely to continue diluting the distinctive quality of the ABBA Mark by lessening the capacity of the mark to exclusively identify and distinguish Plaintiff and its goods and services. Defendants' unlawful use of the Infringing ABBA MANIA Mark in connection with inferior, counterfeit services has also tarnished, and is likely to continue tarnishing, the ABBA Mark, thereby lessening the value of the ABBA Mark as a unique identifier for Plaintiff and its goods and services.

72. Defendants' conduct is willful, in bad faith, and intended to dilute the distinctiveness of the ABBA Mark. Accordingly, Defendants' actions constitute dilution by blurring and dilution by tarnishment in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

73. Defendants' aforementioned conduct is causing irreparable injury to Plaintiff's goodwill and reputation, and Defendants' continued conduct will damage Plaintiff as well as deceive and threaten harm to the public unless the conduct is permanently enjoined by this Court.

74. Plaintiff has no adequate remedy at law.

**FIFTH CLAIM FOR RELIEF
VIOLATION OF ANTICYBERSQUATTING
CONSUMER PROTECTION ACT, 15 U.S.C. § 1125(d)**

75. Plaintiff repeats the allegations set forth in Paragraphs 1 through 44 as if fully set forth herein.

76. The ABBA Mark was distinctive and famous at the time Defendants registered the Infringing Domain Name.

77. Without authorization from Plaintiff, Defendants have registered, trafficked in, and/or used the Infringing Domain Name, which is confusingly similar to the ABBA Mark.

78. Without authorization from Plaintiff, Defendants have registered, trafficked in, and/or used the Infringing Domain Name, which is dilutive of the ABBA Mark.

79. Defendants had full knowledge of Plaintiff's prior rights in the ABBA Mark when they secured a registration for the Infringing Domain Name.

80. Defendants have registered, trafficked in, and/or used the Infringing Domain Name with the bad-faith intent to profit and reap the benefit of the goodwill from the ABBA Mark by diverting consumers to Defendants' website for their own commercial gain and to otherwise profit from unauthorized use of the ABBA Mark.

81. Accordingly, Defendants' conduct constitutes cyberpiracy in violation of Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d).

82. Defendants' aforementioned conduct is causing irreparable injury to Plaintiff's goodwill and reputation, and Defendants' continued conduct will damage Plaintiff as well as deceive and threaten harm to the public unless the conduct is permanently enjoined by this Court.

83. Plaintiff has no adequate remedy at law.

SIXTH CLAIM FOR RELIEF
UNFAIR COMPETITION UNDER NEW YORK COMMON LAW

84. Plaintiff repeats the allegations set forth in Paragraphs 1 through 44 as if fully set forth herein.

85. Defendants' use of the Infringing ABBA MANIA Mark in connection with services that are identical and/or highly related to those offered by Plaintiff under the ABBA

Mark is likely to confuse the public as to the origin, source, or sponsorship of Defendants' services, or to cause mistake or to deceive the public into falsely believing that Defendants' services are authorized, sponsored, endorsed, licensed by, or affiliated with Plaintiff, all in violation of Plaintiff's rights under the common law of the State of New York.

86. As a result of the foregoing conduct, Defendants have been and will continue to be unjustly enriched at Plaintiff's expense as the result of their unauthorized sales of services displaying the Infringing ABBA Mania Mark, thereby depriving Plaintiff of revenues it rightfully should receive by virtue of its famous ABBA Mark. Defendants have retained revenues to which they are not equitably or legally entitled, and are thereby unjustly enriched at Plaintiff's expense, in violation of the common law of the State of New York.

87. Accordingly, Defendants' actions constitute unfair competition under New York common law.

88. Defendants' aforementioned conduct is causing irreparable injury to Plaintiff's goodwill and reputation, and Defendants' continued conduct will damage Plaintiff as well as deceive and threaten harm to the public unless the conduct is permanently enjoined by this Court.

89. Plaintiff has no adequate remedy at law.

SEVENTH CLAIM FOR RELIEF
DILUTION UNDER NEW YORK LAW, N.Y. GEN. BUS. LAW § 360-1

90. Plaintiff repeats the allegations set forth in Paragraphs 1 through 44 as if fully set forth herein.

91. As a result of extensive use and promotion of the ABBA Mark and the goods and services offered thereunder by Plaintiff, the ABBA Mark has become highly distinctive of Plaintiff's goods and services and is widely recognized amongst the consuming public as a designation of source of Plaintiff's goods and services.

92. The ABBA Mark was distinctive and widely known long before Defendants commenced their unauthorized use of the Infringing ABBA MANIA Mark as described herein.

93. Defendants' commercial use of the Infringing ABBA MANIA Mark has diluted and is likely to continue diluting Plaintiff's famous ABBA Mark by impairing its distinctiveness and thereby lessening the capacity of the ABBA Mark to identify and distinguish Plaintiff and its goods and services exclusively. Defendants' unlawful use of the Infringing ABBA MANIA Mark in connection with inferior, counterfeit services has also tarnished, and is likely to continue tarnishing, the ABBA Mark, thereby resulting in injury to the reputation of Plaintiff's business.

94. Accordingly, Defendants' actions constitute dilution in violation of Section 360-*l* of the General Business Law of the State of New York.

95. Defendants' aforementioned conduct is causing irreparable injury to Plaintiff's goodwill and reputation, and Defendants' continued conduct will damage Plaintiff as well as deceive and threaten harm to the public unless the conduct is permanently enjoined by this Court.

96. Plaintiff has no adequate remedy at law.

**EIGHTH CLAIM FOR RELIEF
USE OF NAME WITH INTENT TO DECEIVE
UNDER NEW YORK LAW, N.Y. GEN. BUS. LAW § 133**

97. Plaintiff repeats the allegations set forth in Paragraphs 1 through 44 as if fully set forth herein.

98. Defendants—with intent to mislead and deceive the public—have assumed, adopted, and used the Infringing ABBA MANIA Mark as a trade name for a musical cover band and for advertising and promotional purposes.

99. Defendants' use of the Infringing ABBA MANIA Mark as a trade name has misled and will continue to mislead the public as to the identity of Defendants.

100. Defendants' use of the Infringing ABBA MANIA Mark as a trade name has misled and will continue to mislead the public as to the connection between Plaintiff and Defendants.

101. Defendants' aforementioned conduct is causing irreparable injury to Plaintiff's goodwill and reputation, and Defendants' continued conduct will damage Plaintiff as well as deceive and threaten harm to the public unless the conduct is permanently enjoined by this Court.

102. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court issue a judgment against Defendants and in favor of Plaintiff on all causes of action asserted herein and enter an Order:

A. Granting a permanent injunction enjoining Defendants, jointly and severally, along with their agents, licensees, distributors, attorneys, servants, officers, employees, affiliates, assignees, and all persons in concert or participation with any of the foregoing from:

- i. using the Infringing ABBA MANIA Mark or otherwise imitating, copying, or making unauthorized use of the ABBA Mark;
- ii. importing, manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting, or displaying any good or service bearing or offered under (i) the Infringing ABBA MANIA Mark, (ii) any simulation, reproduction, counterfeit, copy, or colorable imitation of the ABBA Mark, or (iii) any other indicia associated with Plaintiff;
- iii. using the Infringing ABBA MANIA Mark or any simulation, reproduction, counterfeit, copy, or colorable imitation of the ABBA Mark in connection with the importation, promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation, or distribution of any good or service in such fashion as to relate or connect—or tend to relate or

connect—such good or service in any way to Plaintiff or to any goods or services sold, manufactured, sponsored, or approved by Plaintiff;

iv. using any false designation of origin, false description or statement, or performing any act that is likely to lead members of the trade or public to believe that any good or service manufactured, offered, distributed, or sold by Defendants is in any manner associated or connected with Plaintiff or is sold, manufactured, licensed, sponsored, approved, or authorized by Plaintiff;

v. engaging in any activity constituting unfair competition with Plaintiff or constituting infringement or dilution of the ABBA Mark;

vi. applying to register or registering in the United States Patent and Trademark Office or in any state trademark registry any mark consisting in whole or in part of the Infringing ABBA MANIA Mark or consisting in whole or in part of any simulation, reproduction, copy, or colorable imitation of the ABBA Mark;

vii. registering, asking any third party to register on their behalf, or assisting any third party in registering or maintaining any domain name, subdomain name, URL, e-mail address, social media account name or handle, or other electronic identifier that includes, in whole or in part, the ABBA Mark or any formatives thereof (including misspellings);

viii. owning, renting, purchasing, or otherwise obtaining rights to any internet search term or key word that includes in whole or in part the ABBA Mark or any formatives thereof (including misspellings) for purposes of directing internet traffic to any website;

ix. using any social media handle, account name, or hashtag consisting of the Infringing ABBA MANIA Mark or that includes, in whole or in part, the ABBA Mark or any

formatives thereof (including misspellings), on any website that advertises, promotes, or markets any good or service of Defendants;

x. assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (i) through (ix) above; and

xi. effecting assignments or transfers, forming new entities or associations, or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in subparagraphs (i) through (ix) above.

B. Directing Defendants to destroy all products, labels, signs, stationery, prints, packages, promotional and marketing materials, advertisements, and other materials currently in their possession or under their control that incorporate, feature, or bear the Infringing ABBA MANIA Mark, the ABBA Mark, or any other simulation, reproduction, copy, or colorable imitation of the ABBA Mark.

C. Directing the forfeiture or cancellation of the Infringing Domain Name or the transfer to Plaintiff of the Infringing Domain Name pursuant to 15 U.S.C. § 1125(d)(1)(C).

D. Directing such other relief as the Court may deem appropriate to prevent the public from deriving the erroneous impression that any good or service manufactured, imported, advertised, promoted, distributed, displayed, produced, sold, or offered for sale by Defendants is in any manner authorized by or related to Plaintiff in any way.

E. Requiring Defendants to disseminate corrective advertisements in a form approved by the Court, acknowledge their violations of the law hereunder, and ameliorate the false and deceptive impressions produced by such violations.

F. Directing Defendants to file with the Court and serve upon counsel for Plaintiff within thirty days after entry of judgment a report in writing and under oath setting forth in detail the manner and form in which they have complied with the above.

G. Awarding Plaintiff such damages it has sustained or will sustain by reason of Defendants' acts of trademark infringement, dilution, and unfair competition and that such sums be trebled pursuant to 15 U.S.C. § 1117(a) and (b); or, if Plaintiff elects, awarding Plaintiff statutory damages for Defendants' willful use of a counterfeit mark in the total amount of \$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, pursuant to 15 U.S.C. § 1117(c).

H. Awarding Plaintiff all gains, profits, property, and advantages derived by Defendants from their unlawful conduct described herein.

I. Awarding Plaintiff exemplary and punitive damages to deter any further violations of their rights as the Court finds appropriate.

J. Awarding Plaintiff its costs and expenses incurred in this action, including reasonable attorneys' fees, pursuant to 15 U.S.C. §1117(a).

K. Awarding Plaintiff interest, including pre-judgment interest on the foregoing sums.

L. Awarding Plaintiff further relief as the Court may deem just and proper.

Dated: New York, New York
December 3, 2021

Respectfully submitted,

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: /s/ David Donahue

David Donahue (ddonahue@fzlj.com)

Jason D. Jones (jjones@fzlj.com)

Daniel M. Nuzzaci (dnuzzaci@fzlj.com)

151 West 42nd Street, 17th Floor

New York, New York 10036

Phone: (212) 813-5900

*Attorneys for Plaintiff Polar Music
International A.B.*

Exhibit A



David Donahue
Partner

151 West 42nd Street, 17th Floor
New York, NY 10036

T 212.813.5990
ddonahue@fzlj.com

June 17, 2021

BY EMAIL

Handshake Ltd.
2 Holly House, Mill Street
Uppermill, Greater Manchester, OL3 6LZ
United Kingdom
Email: *info@handshakegroup.com*

TAL Entertainment Ltd.
E5 Telford Road
Bicester, OX26 4LD
United Kingdom
Email: *todd@tal-ents.com*

URGENT LEGAL CORRESPONDENCE

Re: Objection to Use of ABBA MANIA as Trademark and Band Name
(FZLZ Ref: PMIA 1906819)

Dear Sirs or Madams:

We represent Polar Music International A.B. (“Polar Music”), owner of the intellectual property associated with the internationally famous and world-renowned musical group ABBA. We write to address trademark infringement and unfair competition arising from the use of our client’s famous ABBA mark by Handshake Ltd. (“Handshake”) and TAL Entertainment Ltd. in connection with the ABBA MANIA musical act.

As you surely know, ABBA is a world-famous pop music group that was formed in Stockholm, Sweden in 1972. Since the band’s founding, Polar Music has been the corporate entity responsible for ABBA’s affairs, including the production and release of its music, the arranging and promotion of its tours, and the ownership, administration, and licensing of its intellectual property—including, without limitation, the ABBA trademark (the “ABBA Mark”).

ABBA achieved nearly instantaneous and meteoric fame when the group won the Eurovision Song Contest in 1974 with the hit song “Waterloo.” By 1976, ABBA had firmly established themselves as one of the most popular musical groups in the world. During the course of the band’s career, Polar Music released nine albums under the ABBA Mark and charted twenty

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singles on the United States' Billboard Hot 100, fourteen of which made the top forty. Four of those singles reached the top ten in the United States, including "Dancing Queen" and "Take a Chance on Me," which were both certified gold for sales of over one million copies each. ABBA has long been famous in the U.S.—nearly *forty years ago*, the United States Court of Appeals for the Federal Circuit recognized ABBA's enormous success. *See In re Polar Music Int'l AB*, 221 U.S.P.Q. 315, 316 (Fed. Cir. 1983) (ABBA "has been extremely successful in the United States and throughout the world, producing several albums and numerous hit singles.").

All of the albums and singles released by Polar Music for ABBA prominently display the ABBA Mark. The ABBA Mark also has appeared in connection with all of ABBA's musical concerts and tours, and continues to be used on a broad range of merchandise sold by Polar Music and its licensees, including t-shirts, posters, costumes, and other souvenirs. As a result of Polar Music's investment of time, effort, and resources to promote ABBA, the ABBA Mark has become strongly associated with our client and has become famous among consumers in the United States. Today, the ABBA Mark is one of Polar Music's most valuable intellectual property assets and has come to represent enormous goodwill. Indeed, as a testament to ABBA's enduring fame, there has been extensive news coverage in recent years relating to ABBA's forthcoming new digital entertainment experience to celebrate the approaching 50th anniversary of the band's founding. To promote the project, ABBA has recorded—and Polar Music will release—several new songs, which will be featured in a pre-recorded television special that is set to air in 2022, with a tour featuring holographic images of ABBA's members to follow.

To further protect its investment in the ABBA Mark, Polar Music has secured and maintains several trademark registrations for the ABBA Mark in connection with a variety of goods and services, including U.S. Trademark Registration Nos. 1072394, 1072398, 3389319, 3862613, 4125830, and 4347054. These trademark registrations are valid, subsisting, and in full force and effect. Moreover, the registrations constitute *prima facie* evidence of the validity of the marks, of our client's ownership of the marks, and of our client's exclusive right to use the marks in connection with the goods and services identified in the registrations. *See* 15 U.S.C. § 1115(a).

It has come to our client's attention that Handshake and TAL Entertainment are managing a musical act under the name ABBA MANIA that intends to tour the United States in fall 2021, exclusively performing ABBA songs. While our client has no objection to other acts performing ABBA songs (provided that they do so in venues with appropriate performing rights licenses), your companies' decision to call the act ABBA MANIA—a name that includes the famous ABBA mark—is likely to cause consumers to believe there is an association, affiliation, or sponsorship between our client and ABBA MANIA. Such confusion is especially likely to arise given Polar Music's widely-publicized plans to launch a hologram tour and release new music in the coming year.

In light of the foregoing, any use by your companies of ABBA MANIA in the United States will constitute trademark infringement, unfair competition, and dilution in violation of Sections 32(1), 43(a), and 43(c) of the Lanham Act, 15 U.S.C. §§ 1114(1), 1125(a), and 1125(c), in addition to violating related state laws. The remedies for such violations include injunctive and monetary relief. *See* 15 U.S.C. §§ 1116, 1117.

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Polar Music is hopeful that this matter can be resolved amicably and has asked us to reach out to you for that purpose. To that end, our client requests that you take the following actions:

(1) immediately change the name of the ABBA MANIA musical act so that it does not include the term ABBA; and (2) agree never to use or register any trade name or trademark that includes the term ABBA or is otherwise confusingly similar to our client's ABBA Mark. These points are nonnegotiable.

We request that you confirm in writing by no later than **July 1, 2021**, that you intend to comply with these demands. We will send a formal settlement agreement to you for execution upon receipt of your confirmation. If you do not agree to these demands (or fail to respond to this letter), please understand that Polar Music will proceed with filing a federal lawsuit in New York to protect its valuable trademark and intellectual property rights.

Nothing herein should be construed as a full and complete statement of all relevant facts, and the foregoing is written without prejudice to any of Polar Music's rights, claims, defenses, and remedies, all of which are expressly reserved.

Very truly yours,



David Donahue

cc: Jason D. Jones, Esq. (jjones@fzlj.com)

Daniel M. Nuzzaci, Esq. (dnuzzaci@fzlj.com)