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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

STEELE CLARKE SMITH III,) Case No. 3:13-cv-01463-BTM-BGS
an Individual,)
)
Plaintiff,) **AMENDED ANSWER AND**
) **COUNTERCLAIMS OF**
) **AMERICANS FOR SAFE ACCESS**

v.)

SAN DIEGO AMERICANS FOR)
SAFE ACCESS, an entity of unknown)
form; SAN DIEGO ASA, an entity of)
unknown form; AMERICANS FOR)
SAFE ACCESS, a California)
corporation; AMERICANS FOR SAFE)
ACCESS FOUNDATION, a California)
corporation; and DOES 1through 100,)
Inclusive,)
)
Defendants.)

AMERICANS FOR SAFE ACCESS,)
a California corporation, and)
AMERICANS FOR SAFE ACCESS)
FOUNDATION, a California)
corporation,)
Counterclaimants,)

1)
 2 STEELE CLARKE SMITH III,)
 3 an Individual,)
 4 Counterdefendant,)
 5 _____)

6
7 **I.**

8 **ANSWER**

9 PLEASE TAKE NOTICE THAT, pursuant to Federal Rule of Civil Procedure
 10 81, defendants San Diego Americans for Safe Access, San Diego ASA, San Diego
 11 Chapter of Americans for Safe Access, Americans for Safe Access, and Americans for
 12 Safe Access Foundation, Eugene Davidovich, Paul Marini, and Talana Latimer
 13 (collectively “ASA”) hereby file their verified answer to the verified complaint in this
 14 action as follows:
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- 18 1. Defendants are without sufficient information to confirm or deny where
 19 plaintiff resides. Defendants deny this allegation on that basis.
 20
 21 2. Defendants admit the allegations of paragraph 2 of the Complaint.
 22 3. Defendants admit the allegations of paragraph 3 of the Complaint.
 23 4. Defendants admit the allegations of paragraph 4 of the Complaint.
 24 5. Defendants admit the allegations of paragraph 5 of the Complaint.
 25 6. Defendants admit the allegations of paragraph 6 of the Complaint.
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1 7. Defendants admit the allegation of paragraph 7 of the Complaint that
2 Plaintiff has brought this action against defendants Does 1 through 100, inclusive.
3

4 Defendants deny the remaining contentions in paragraph 7 of the Complaint for want
5 of knowledge or information.
6

7 8. Defendants deny the allegations of paragraph 8 of the Complaint that each
8 defendant acted as an agent of each other. Because this allegation is vague, defendants
9 deny this allegation for want of knowledge or information.
10

11 9. Defendants deny the allegations of paragraph 9 of the Complaint that each
12 defendant is an alter-ego of the other defendants and that defendants have disregarded
13 the formalities of corporate form, as well as the related allegations.
14

15 10. Defendants admit the allegations in paragraph 10 of the Complaint that
16 they have used the locations described in the allegation. Defendants deny that they
17 “operate” out of these locations.
18

19 11. Defendants admit that San DIEGO AMERICANS FOR SAFE ACCESS
20 is the registrant owner of the domain name “safeaccesssd.org. Defendants further
21 admit that venue is proper in this judicial district.
22

23 12. Defendants deny the allegation in paragraph 12 of the Complaint that
24 Smith is the proper registrant owner of the service mark “Americans for Safe Access,”
25 and, on that basis, deny this allegation. Defendants admit that Smith may have
26 received a registration for this service mark in bad faith and/or fraudulently.
27
28

1 13. Defendants admit the allegation in paragraph 13 of the Complaint that
2 they are using their name “Americans for Safe Access.” Defendants deny that this
3 mark belongs to Smith.
4

5 14. Defendants admit the allegation in paragraph 14 of the Complaint that
6 they are using their name “Americans for Safe Access.” Defendants deny that this
7 mark belongs to Smith.
8

9 15. Defendants admit the allegations of paragraph 15 of the Complaint.
10

11 16. Defendants admit the allegations in paragraph 16 of the Complaint that
12 they use the domain names “americansforsafeaccess.org” and “safeaccessnow.org” and
13 published content thereon. Defendants are without sufficient understanding of the
14 vague allegation that there is a “commonality amongst one or more of the officers”
15 AMERICANS FOR SAFE ACCESS AND AMERICANS FOR SAFE ACCESS
16 FOUNDATION, and, on that basis, denies this allegation. Defendants admit that the
17 two entities are affiliated.
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21 17. Defendants admit the allegations of paragraph 17 of the Complaint that
22 they use their own service mark and logo on their websites. Defendants deny that
23 either the service mark or logo belongs to Smith.
24

25 18. Defendants admit the allegations of paragraph 18 of the Complaint that
26 they use their own service mark and logo on their websites. Defendants deny that
27 either the service mark or logo belongs to Smith.
28

1 **FIRST AFFIRMATIVE DEFENSE**

2 29. This action is barred by the doctrine of unclean hands.
3

4 **SECOND AFFIRMATIVE DEFENSE**

5 30. Plaintiff has no trademark or other intellectual property rights in the term
6
7 “Americans for Safe Access.”

8 **THIRD AFFIRMATIVE DEFENSE**

9 31. Plaintiff has no trademark or other intellectual property rights in the term
10
11 “ASA.”

12 **FOURTH AFFIRMATIVE DEFENSE**

13 32. Plaintiff has no trademark or other intellectual property rights in the trade
14
15 dress or logo, including the electronic banner, used by defendants/counterclaimants.
16

17 **FIFTH AFFIRMATIVE DEFENSE**

18 33. Defendants’ use of the terms “Americans for Safe Access,” “ASA,” its
19
20 logo, and electronic banner was fair and in good faith.

21 **SIXTH AFFIRMATIVE DEFENSE**

22 34. Plaintiff committed fraud or bad-faith before the United States Trademark
23
24 and Patent Office (“USPTO”) in registering any of the marks at issue.

25 **SEVENTH AFFIRMATIVE DEFENSE**

26 35. Plaintiff has been unjustly enriched by his actions in regard to the marks
27
28 at issue.

EIGHTH AFFIRMATIVE DEFENSE

36. Defendants’ use of the terms “Americans for Safe Access,” “ASA,” its logo, and electronic banner was fair and in good faith.

III.

COUNTERCLAIMS

For their counterclaims against Plaintiff Steele Smith III (“Smith”), defendants Americans for Safe Access and Americans for Safe Access Foundation (collectively “ASA”) allege as follows:

1. The counterclaimants, collectively ASA, are nonprofit corporations organized under the laws of the State of California with a current business address of 1806 Vernon Street, N.W., Washington, DC.

2. The counterclaim defendant, Smith, is the plaintiff in this action.

3. Subject matter jurisdiction for these counterclaims is based upon federal question jurisdiction under 28 U.S.C. §§ 1331 and 1338, and under 15 U.S.C. §§ 1119, 1120 and 1121, as these counterclaims arise under the Lanham Act, 15 U.S.C. § 1051 *et seq.*

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

5. An actual case or controversy exists by virtue of the parties’ dispute who owns the intellectual property at issue.

1 6. Intradistrict assignment of this action to any division of this Court is
2 proper under Local Rule 3-2(c) as an intellectual property action.
3

4 **FACTS APPLICABLE TO ALL COUNTERCLAIMS**

5 7. ASA was founded as Americans for Safe Access in 2002. ASA is the
6 largest national organization of patients, medical professionals, scientists and
7 concerned citizens promoting safe and legal access to medical cannabis. ASA is
8 engaged in a multifaceted strategy of public education, impact litigation, grassroots
9 development and advocacy, media campaigns, and direct support services.
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11

12 8. Since its inception in 2002, ASA adopted and has used the AMERICANS
13 FOR SAFE ACCESS service mark and owns common law rights in the AMERICANS
14 FOR SAFE ACCESS mark by virtue of its continuous use of the mark in commerce in
15 connection with at least the services described above (hereafter the “ASA Word
16 Mark”).
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19 9. ASA registered the domain name <safeaccessnow.org> on April 15, 2002
20 and has operated a website at this domain name since 2002, prominently using the
21 ASA Word Mark in the promotion of its services.
22

23 10. In 2006, ASA was incorporated under the laws of the state of California.
24 In 2006, ASA adopted and has used the logo mark shown below (hereafter the “ASA
25 Design Mark”) and owns common law rights in the ASA Design Mark by virtue of its
26
27
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1 continuous use of the mark in commerce in connection with at least the services
2 described above.



7 13. The services offered under the ASA marks have been widely promoted
8 throughout the United States.

9 14. Consequently, members and prospective members, donors and
10 prospective donors, and sponsors and prospective sponsors recognize the ASA mark as
11 identifying services originating from ASA.

12 15. ASA has attained national name recognition for its services and, until
13 Smith's activities since 2011, the public was able to distinguish the services of ASA
14 from those of others on the basis of the extensive and continuous use of its word and
15 design marks.

16 16. As a result of ASA's extensive use and promotion of the ASA marks, the
17 ASA marks have gained national public recognition. Further, ASA enjoys substantial
18 goodwill among members, donors, and sponsors because of the high quality of its
19 services.

20 17. The ASA marks serve to identify ASA as the source of its services,
21 namely, disseminating scientific research about the medical effects of cannabis,
22 dissemination of materials to educate the public about medical cannabis, promoting
23 services.

1 public awareness of the benefits and the medical uses of cannabis, promoting technical
2 and scientific investigation, research, and experimentation in the field of advancement
3 of the application of scientific discovery for the betterment of humankind through
4 support of educational institutions and scientific organizations, advancing legal
5 medical marijuana therapeutics and research, namely, promoting public awareness of
6 the need for legalization of medical marijuana, and providing litigation services in
7 support of legalization of medical marijuana.
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11 18. Under the auspices and with the cooperation of ASA, Smith helped to
12 found the Orange County Chapter of ASA in 2007.
13

14 19. In approximately 2009, Smith had a falling out with the organization
15 when he did not win an election to serve as the Orange County ASA chapter president.
16 Though Smith contested the election results, the results, determining that Smith was
17 not elected as an officer of the Orange County ASA chapter, were confirmed.
18

19 20. The ASA marks and the business of ASA were known to Smith at the
20 time he began offering his services under the ASA marks.
21

22 21. Smith registered the domain name <asanational.org> on January 20, 2011.
23

24 22. On information and belief, Smith commenced use of the ASA Word Mark
25 on May 5, 2011, on a website at <asanational.org>, offering services under the ASA
26 Word Mark and ASA Design Mark that were identical to and overlapping with or at
27 least are related to the services offered by ASA.
28

1 23. On June 1, 2011, Smith filed an application at the United States Patent
2 and Trademark Office (“U.S.P.T.O.”) for the AMERICANS FOR SAFE ACCESS
3 mark, which is identical to ASA’s Word Mark, under Serial No. 76/707,814, claiming
4 use of said mark in interstate commerce as of May 5, 2011.
5

6
7 24. In support of Application Serial No. 76/707,814, Smith submitted a
8 signed declaration stating as follows:

9
10 The undersigned, being hereby warned that willful false statements
11 and the like so made are punishable by fine or imprisonment, or
12 both, under 18 U.S.C. Section 1001, and that such willful false
13 statements, and the like, may jeopardize the validity of the
14 application or any resulting registration, declares that he/she is
15 properly authorized to execute this application on behalf of the
16 applicant; he/she believes the applicant to be the owner of the
17 trademark/service mark sought to be registered, or, if the
18 application is being filed under 15 U.S.C. Section 1051(b), he/she
19 believes applicant to be entitled to use such mark in commerce; to
20 the best of his/her knowledge and belief no other person, firm,
21 corporation, or association has the right to use the mark in
22 commerce, either in the identical form thereof or in such near
resemblance thereto as to be likely, when used on or in connection
with the goods/services of such other person, to cause confusion, or
to cause mistake, or to deceive; and that all statements made of
his/her own knowledge are true; and that all statements made on
information and belief are believed to be true.

23 25. Subsequently, Smith registered additional domain names incorporating
24 Petitioner’s Mark, including:

25
26 <americansforsafeaccessal.org>, <americansforsafeaccessak.org>,
27 <americansforsafeaccessaz.org>, <americansforsafeaccessar.org>,
28 <americansforsafeaccessco.org>, <americansforsafeaccessde.org>,
 <americansforsafeaccessdc.org>, <americansforsafeaccesshi.org>,
 <americansforsafeaccessid.org>, <americansforsafeaccessil.org>,

1 <americansforsafeaccessin.org>,< americansforsafeaccessia.org>,
2 <americansforsafeaccessks.org>, <americansforsafeaccessme.org>,
3 <americansforsafeaccessmd.org>, <americansforsafeaccessma.org>,
4 <americansforsafeaccessmi.org>, <americansforsafeaccessms.org>,
5 <americansforsafeaccessmo.org>, <americansforsafeaccessmt.org>,
6 <americansforsafeaccessnv.org>, <americansforsafeaccessnh.org>,
7 <americansforsafeaccessnj.org>, <americansforsafeaccessnm.org>,
8 <americansforsafeaccessny.org>, <americansforsafeaccessoh.org>,
9 <americansforsafeaccessok.org>, <americansforsafeaccessot.org>,
10 <americansforsafeaccesspa.org>, <americansforsafeaccessri.org>,
11 <americansforsafeaccessvt.org>, <americansforsafeaccesswa.org>,
12 <americansforsafeaccesswv.org>, and <americansforsafeaccesswi.org>.
13 (Collectively with the <asanational.org> domain name “Smith’s ASA
14 Domains”).

15 26. Smith has adopted and uses a logo mark that is identical to the ASA
16 Design Mark, as shown on the specimen Smith submitted to the U.S.P.T.O. in support
17 of the application for the subject mark on June 1, 2011, on the website at
18 <asanational.org>, on other websites listed herein, including but not limited to
19 <americansforsafeaccessor.org>, and on the business card shown below:



1 27. Smith, as a former member of ASA, had direct knowledge of ASA and
2 was aware of ASA's adoption and use of the ASA Word Mark and the ASA Design
3 Mark.
4

5 28. Nevertheless, in his application to register the ASA Word Mark at the
6 U.S.P.T.O., Smith stated that:
7

- 8 a. he believed Applicant to be the owner of the trademark/service
9 mark sought to be registered,
- 10 b. he believed Applicant to be entitled to use such mark in commerce
- 11 c. to the best of his knowledge and belief no other person, firm,
12 corporation, or association has the right to use the mark in
13 commerce, either in the identical form thereof or in such near
14 resemblance thereto as to be likely, when used on or in connection
15 with the goods/services of such other person, to cause confusion, or
16 to cause mistake, or to deceive
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21 29. ASA asserts that the afore-mentioned statements included in the Smith
22 application are each false. Smith knew or should have known that (a) he was not the
23 owner of the mark sought to be registered, (b) he was not entitled to use the mark in
24 commerce, and (c) he knew full well of the existence of ASA, a non-profit
25 corporation with use-based rights in the mark at issue.
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1 30. Registration of the above-referenced application issued on the
2 Supplemental Register on October 2, 2012, said registration describing services in
3 Class 35 as “Association services, namely, promoting the interest of medical
4 marijuana; business consultation services in the field of marijuana; consulting services
5 in the field of marketing of educational training; consumer marketing research and
6 consulting related thereto; consumer research; dissemination of advertising material
7 such as leaflets, brochures and printed matter; distribution of publicity materials,
8 namely, flyers, brochures, newspapers and magazines; maintaining a registry of
9 breeds in the field of cannabis plants; organization and conducting of product
10 presentation; organization and holding of fairs for commercial or advertising
11 purposes; promoting public awareness of the need for medical marijuana; promoting
12 public awareness of medical marijuana; organization of exhibitions for commercial or
13 advertising purposes; promoting technical and scientific investigation, research, and
14 experimentation in the field of advancement of the application of scientific discovery
15 for the betterment of humankind through support of educational institutions and
16 scientific organizations; promoting the benefits of medical marijuana; and, advancing
17 legal medical marijuana therapeutics and research, namely, promoting public
18 awareness of the need for legalization of medical marijuana.”
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27 30. Continued use and registration by Smith of ASA’s marks for identical
28 and/or overlapping services has caused actual confusion and is likely to continue

1 causing confusion among members, sponsors, and donors as to the true source of
2 Smith's services.
3

4 31. ASA had and has not consented to Smith's use of the ASA marks, nor has
5 ASA sponsored, endorsed, or approved the services offered and promoted by Smith.
6

7 32. After ASA learned of Smith's unauthorized use of the ASA Word Mark,
8 on June 21, 2012, ASA's Chief Counsel sent a letter to Smith, and put Smith on notice
9 as to a likelihood of confusion based on Smith's use of marks identical to the ASA
10 marks, as well as related domain names.
11

12 33. Smith was unwilling to voluntarily cease use of the ASA marks and
13 continued to infringe the ASA marks to leverage and or tarnish the goodwill in the
14 ASA marks.
15

16 34. After Smith learned that his application to federally register the ASA
17 Word mark was forthcoming, in an email dated September 8, 2012, Smith lashed back
18 at ASA and gave ASA a September 14 deadline "to decide whether or not to bind a
19 mutually beneficial consulting agreement. Otherwise, I must tilt the proverbial
20 dominoes and will have no desire to stop. I already have the documents I need to
21 remove conflicting and confusing ASA images, wherever they appear. That means
22 safeaccessnow.org and all chapters with all hosts, statewide."
23
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1 35. On October 2, 2012, the U.S.P.T.O. issued Smith a federal registration on
2 the Supplemental Register under Registration No. 4,219,630 for the service mark
3
4 AMERICANS FOR SAFE ACCESS.

5 36. The recitation of services in afore-mentioned registration described
6 Smith's services as: "Association services, namely, promoting the interest of medical
7 marijuana; business consultation services in the field of marijuana; consulting services
8 in the field of marketing of educational training; consumer marketing research and
9 consulting related thereto; consumer research; dissemination of advertising material
10 such as leaflets, brochures and printed matter; distribution of publicity materials,
11 namely, flyers, brochures, newspapers and magazines; maintaining a registry of breeds
12 in the field of cannabis plants; organization and conducting of product presentation;
13 organization and holding of fairs for commercial or advertising purposes; promoting
14 public awareness of the need for medical marijuana; promoting public awareness of
15 medical marijuana; organization of exhibitions for commercial or advertising purposes;
16 promoting technical and scientific investigation, research, and experimentation in the
17 field of advancement of the application of scientific discovery for the betterment of
18 humankind through support of educational institutions and scientific organizations;
19 promoting the benefits of medical marijuana; and, advancing legal medical marijuana
20 therapeutics and research, namely, promoting public awareness of the need for
21 legalization of medical marijuana."
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1 37. The word and design service marks adopted and used and the word mark
2 subsequently registered by Smith include the identical ASA trade name, the identical
3 ASA Word Mark, and identical ASA Design mark, in their respective entirety.
4

5 38. Unless Smith is enjoined from using the ASA Word Mark and ASA
6 Design Mark to promote its services, the ASA marks will continue to be infringed,
7 thereby destroying the distinctive quality that ASA has developed in the more than ten
8 years since ASA's inception, to the detriment of ASA and the public.
9
10

11 39. In addition to actual confusion, Smith's unauthorized use of the ASA
12 marks in connection with his services is likely to continue to cause direct or reverse
13 confusion, to cause mistake and to deceive members, prospective members, donors,
14 prospective donors, sponsors, and prospective sponsors into falsely believing that the
15 parties' services originate from a common source or that there is a connection between
16 ASA and Smith.
17
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19 40. Smith's promotion of its services under the ASA marks is directed to the
20 members, prospective members, donors, prospective donors, sponsors, and prospective
21 sponsors of ASA, and are promoted through the same and overlapping channels of
22 trade as those used by ASA to present its services.
23
24

25 41. Smith's conduct is continuing and will continue unless Smith is restrained
26 and enjoined from engaging the conduct described herein, and ASA has and will
27 continue to suffer irreparable injury to its goodwill. It may be difficult to ascertain the
28

1 amount of compensation that could afford ASA adequate relief for the acts of Smith,
2 present and threatened, and ASA's remedy at law may not be adequate to compensate
3 it for said harm and damage.
4

5 31. Smith is at the very least acting in bad faith, if not fraudulently. Smith's
6 conduct complained of herein is in bad faith, malicious, fraudulent, knowing, willful,
7 and deliberate entitling ASA to an accounting of Smith's profits, increased damages,
8 and an award of its attorneys' fees and costs incurred in prosecuting this action under
9
10 15 U.S.C. § 1117.
11

12 32. This is an exceptional case under 15 U.S.C. §1117(a).
13

14 **FIRST CAUSE OF ACTION**

15 (Cancellation of U.S. Reg. No. 4,219,630 for Fraud on USPTO)
16

17 37. ASA incorporated by reference each and every allegation in the preceding
18 paragraphs.
19

20 38. On information and belief, U.S. Trademark Registration No. 4,219,630
21 ("the Registration") was procured by fraud and/or bad-faith.
22

23 39. On information and belief, Smith's statements to the USPTO that he
24 believed he was the true owner of the marks at issue and that no other person, firm, or
25 corporation had the right to use said marks in commerce were false representations of
26 material fact, and constitutes fraud on the USPTO.
27
28

1 representations of fact which are likely to cause confusion or mistake, or to deceive the
2 public as to the origin, sponsorship, or approval of the services of Smith.
3

4 51. Smith's conduct constitutes trademark infringement and unfair
5 competition in violation of 15 U.S.C. § 1125(a).
6

7 52. Without injunctive relief, ASA has no means by which to control the
8 continuing injury to its reputation and goodwill. ASA has been and will continue to be
9 irreparably harmed. No amount of money damages can adequately compensate
10 Plaintiff if it loses the ability to control use of its mark, reputation and goodwill
11 through the false and unauthorized use of its service mark.
12

13 53. As a direct and proximate result of Smith's infringing conduct, ASA has
14 suffered and will continue to suffer irreparable injury to its business reputation and
15 goodwill for which no adequate remedy exists at law and has lost donations,
16 contributions, and sponsorships in an amount not yet fully ascertained.
17

18 54. Because Smith's actions have been committed willfully and with intent to
19 profit from ASA's goodwill in its common law marks, this is an exceptional case and
20 ASA is entitled to recover Smith's profits together with ASA's damages, trebled, costs
21 of the action, and reasonable attorneys' fees pursuant to Section 35(a) of the Lanham
22 Act, 15 U.S.C. § 1117(a).
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FOURTH CAUSE OF ACTION

(Trademark Infringement - Cal. Bus. & Prof. Code §14335 et seq.)

55. ASA incorporates herein by reference each and every allegation in the preceding paragraphs.

56. Smith engaged in the acts as alleged herein to enhance the commercial value of its services.

57. Smith's acts as alleged herein constitute, among other things, unauthorized use or infringement of ASA's trademark rights under California Business and Professions Code § 14335 et seq.

58. Without injunctive relief, ASA has no means by which to control the continuing injury to its reputation and goodwill. ASA has been and will continue to be irreparably harmed. No amount of money damages can adequately compensate ASA if it loses the ability to control use of its mark, reputation and goodwill through the false and unauthorized use of its service marks.

59. Because Smith's actions have been committed willfully, maliciously and intentionally, ASA is entitled to recover Smith's profits together with ASA's damages, trebled, costs of the action, and reasonable attorneys' fees pursuant to Cal. Bus & Prof. Code §14320, 14330, and 14340.

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FIFTH CAUSE OF ACTION

(Unfair Competition - California Common Law)

60. ASA incorporates herein by reference each and every allegation in the preceding paragraphs.

61. Smith’s infringement of the ASA Word and ASA Design Marks constitutes “unlawful, unfair or fraudulent business act[s] or practice[s] and unfair, deceptive, untrue or misleading advertising” within the meaning of California Business & Professions Code § 17200.

62. Without injunctive relief, ASA has no means by which to control the continuing injury to its reputation and goodwill. ASA has been and will continue to be irreparably harmed. No amount of money damages can adequately compensate ASA if it loses the ability to control use of its mark, reputation and goodwill through the false and unauthorized use of its registered service mark.

SIXTH CAUSE OF ACTION

(Anti-Cybersquatting – 15 U.S.C. § 1125(d))

63. ASA incorporates herein by reference each and every allegation in the preceding paragraphs.

64. Smith’s lack of good faith in and bad faith registration of the domain names complained of herein comprises an intent to divert members, sponsors, and donors to tarnish ASA or for commercial gain in violation of 15 U.S.C. § 1125(d).

PRAYER FOR RELIEF

1
2 WHEREFORE, in consideration of the foregoing, ASA respectfully requests
3
4 that this Court enter an Order granting the following relief:

5 a) that Smith be enjoined during the pendency of this action, and permanently
6
7 thereafter from using the infringing ASA Word Mark and ASA Design Mark or any
8
9 mark or domain name that is likely to be confused with the ASA Marks;

10 b) that Smith be ordered to turn over to ASA for destruction all printed
11
12 advertising, brochures, and promotional materials and related items which use the ASA
13
14 Word Mark and ASA Design Mark or any mark or domain name that is likely to be
15
16 confused with the ASA Marks;

17 c) that Smith be ordered to account to ASA, and pay to ASA, all of Smith's
18
19 profits and all amounts by which Smith has been unjustly enriched from its acts and
20
21 practices complained of herein, increased on the grounds that this is an exceptional
22
23 case and accordingly to the circumstances of the case under Section 35(a) of the
24
25 Lanham Act;

26 d) that Smith be ordered to pay ASA the actual damages suffered by ASA as a
27
28 result of Smith's wrongful acts, as well as additional statutory damages;

e) that Smith be ordered to pay ASA prejudgment interest on any monetary
award;

f) that Smith be ordered to pay ASA's attorneys' fees and costs;

1 g) that Registration No. 4,219,630 be cancelled;

2 h) that Smith be ordered to transfer the domain names complained of herein to

3
4 ASA; and

5 i) For other and further relief as the Court may deem just and proper.

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7
8 DATED: July 23, 2013

Respectfully submitted,

9 /s/ Jessica C. McElfresh
10 JESSICA C. McELFRESH
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VERIFICATION

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4 I, Jessica McElfresh, declare as follows:

5 I drafted and reviewed the Verified Answer to the Complaint. The matters
6 stated in the responses are true and correct to the best of my personal knowledge. I
7 maintain my offices in the County of San Diego, which is not within the same county
8 as the counterclaimants. Defendants who reside within my county have already
9 verified their answer to the complaint.
10
11

12 I declare under penalty of perjury under the laws of the State of California that
13 the foregoing is true and correct.
14

15
16
17 DATED: July 23, 2013

Respectfully submitted,

18 /s/ Jessica C. McElfresh
19 JESSICA C. McELFRESH
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CERTIFICATE OF SERVICE

I, JESSICA McELFRESH, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to this action. My business address is 11622 El Camino Real, Suite 100, San Diego, California 92130.

On July 23, 2013, I served the following document:

AMENDED ANSWER AND COUNTERCLAIMS OF AMERICANS FOR SAFE ACCESS

via first-class mail to:

Arthur D. Hodge
701 Palomar Airport Road, Suite 300
Carlsbad, CA 92011

I declare under penalty of perjury that the foregoing is true and correct.

DATED: July 22, 2013

Respectfully submitted,

/s/ Jessica C. McElfresh
JESSICA C. McELFRESH