

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP
John B. Quinn (SBN 90378)
2 johnquinn@quinnemanuel.com
865 S. Figueroa St, 10th Floor
3 Los Angeles, CA 90017
Tel: (213) 443-3200
4 Fax: (213) 443-3100

5 Margret M. Caruso (SBN 243473)
margretcaruso@quinnemanuel.com
6 555 Twin Dolphin Drive, 5th Floor
Redwood City, CA 94065
7 Tel: (650) 801-5000
8 Fax: (650) 801-5100

9 Attorneys for Plaintiff
The Academy of Motion Picture Arts and
Sciences

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ACADEMY OF MOTION PICTURE
ARTS AND SCIENCES, a California
nonprofit corporation,

Plaintiff,

vs.

LASH FARY d/b/a DISTINCTIVE
ASSETS and DISTINCTIVE ASSETS
LLC,

Defendants.

CASE NO. 2:16-cv-1061

COMPLAINT FOR TRADEMARK
INFRINGEMENT, FALSE
ADVERTISING, AND TRADEMARK
DILUTION,

DEMAND FOR JURY TRIAL

1 Plaintiff Academy of Motion Picture Arts and Sciences complains of
2 defendants and alleges as follows:

3 Jurisdiction and Venue

4 1. This action arises under the trademark laws of the United States,
5 Title 15, United States Code, as well as the unfair competition and dilution laws of
6 the same, the State of California, and the common law. This Court has federal
7 question jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121.
8 This Court has pendent jurisdiction over the state law claims alleged herein. Venue
9 lies in this district under 28 U.S.C. § 1391(b).

10 Nature of Action

11 2. Plaintiff Academy of Motion Picture Arts and Sciences (the
12 “Academy”) is a non-profit organization dedicated to fostering and encouraging
13 excellence in motion picture filmmaking. As part of its mission, the Academy
14 annually presents the Academy Awards of Merit, popularly known as the “Oscars,”
15 or “Academy Awards,” to honor outstanding achievements in the film industry. The
16 Academy owns trademark registrations for OSCAR, OSCARS, ACADEMY
17 AWARD, and ACADEMY AWARDS and carefully ensures that they are only used
18 in a manner consistent with the highest standards of achievement.

19 3. Upon information and belief, Defendant Lash Fary is the founder,
20 owner, and sole proprietor of Distinctive Assets and the founder of Defendant
21 Distinctive Assets LLC (collectively, “Distinctive Assets”). Distinctive Assets
22 purports to be a “niche” marketing business that specializes in “celebrity placement”
23 by promoting the products of third parties through high-profile “gift bags” to
24 celebrities who attend or are nominated for awards shows, such as the Academy
25 Awards.

26 4. The Academy has no affiliation, connection, or association with
27 Distinctive Assets’ “gift bags” or their contents, and certainly does not sponsor,
28 endorse, or approve of Distinctive Assets, its services, or the products it promotes.

1 Yet Distinctive Assets uses the Academy’s trademarks to raise the profile of its “gift
2 bags” and falsely create the impression of association, affiliation, connection,
3 sponsorship, and/or endorsement. For example, Distinctive Assets has referred to its
4 gift bags as the “Everyone Wins At The Oscars®! Nominee Gift Bags,” and
5 “Everyone Wins Nominee Gift Bags in Honor of the Oscars®” (collectively the
6 “Infringing Bags”). (See Distinctive Assets’ Twitter posts of February 23, 2015
7 and February 5, 2016, true and correct copies of which are attached as Exhibit A).

8 5. Unsurprisingly, third parties have expressed confusion about the
9 Academy’s association, affiliation, connection, sponsorship or endorsement of the
10 Infringing Bags. Indeed, the recent wave of media stories concerning the Infringing
11 Bags suggest that Distinctive Assets issued a press release to a multitude of media
12 outlets that left readers with the definite impression of a connection between the
13 Infringing Bags and the Oscars. For example, *The Telegraph* newspaper reported on
14 its website that “[t]he Oscars doesn’t have a separate category for comedy, but if it
15 did, *its own goodie bag* would be an outright winner.” (See “Breast lifts, vibrators
16 and weight-loss aids: The Oscar’s sexist \$200,000 goodie bag shames women,”
17 posted on Telegraph.co.uk, a true and correct copy of which is attached as Exhibit
18 B.) Similarly, *Glamour* magazine reported on its website that “[t]he 2016 Oscars
19 might be the Academy of Motion Picture Arts and Sciences’ swankiest ceremony to
20 date if this year’s gift bag has anything to say about it.” (“You Won’t Believe How
21 Much the 2016 Oscar Swag Bags Are Worth!” posted on Glamour.com, a true and
22 correct copy of which is attached as Exhibit C). These mistaken impressions are
23 then passed on to readers and viewers of the reporting media, exponentially
24 expanding the confusion Distinctive Assets sows among Oscar nominees, sponsors,
25 viewers, and the public at large. Distinctive Assets’ confusing promotion of the
26 Infringing Bags unmistakably infringes and is likely to dilute the Academy’s
27 trademarks.

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1 6. Distinctive Assets’ infringement and dilution is willful. Its use of
2 registered trademark “®” symbols in connection with the Academy’s trademarks
3 reflects its awareness of the Academy’s trademark rights. Moreover, Distinctive
4 Assets knows that the Academy objects to the use of the Academy’s trademarks to
5 promote Distinctive Assets’ Infringing Bags. Last year, the Academy repeatedly
6 wrote to Distinctive Assets explaining the harm these gift bag promotions cause.
7 Eventually, through its lawyer, Distinctive Assets agreed to stop creating false
8 impressions that is associated with the Oscar ceremony or the Academy. But it has
9 not done so. In flagrant disregard for its representations that it would clean up its
10 act, Distinctive Assets is now at it again.

11 7. Distinctive Assets’ current unlawful promotion of its “gift bags”
12 includes false statements concerning its association with award shows. On a page
13 of its website with the header “AWARD SHOWS AND CELEBRITY
14 PLACEMENTS,” Distinctive Assets proclaims:

15 Our *exclusive involvement with many major award shows* provides
16 valuable access to an often elusive celebrity market. *At each of our*
17 *events*, Distinctive Assets selects vendors and provides them with the
18 opportunity to present their products/services to celebrities in a Gift
19 Basket or through representation in our interactive Gift Lounge. Our
20 résumé of events, press procurement and reputation among celebrities
21 and producers are unrivaled in the industry.

22 (“Award Shows & Celebrity Placement” page on DistinctiveAssets.com, a
23 true and correct copy of which is attached as Exhibit D). Distinctive Assets
24 then represents: “Our Gift Lounges are held ON SITE at the award show or
25 event and provides [sic] an opportunity for our clients to represent their line
26 and personally interact with celebrities (and press).” (*Id.*) These statements
27 are false regarding the Academy Awards. Distinctive Assets does not have
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1 any involvement with the Oscars—“exclusive” or otherwise—and it has no
2 presence on the premises of the Oscar ceremony.

3 8. The Academy regrets having to bring this suit to compel Distinctive
4 Assets to stop its false, confusing, misleading, infringing, and diluting actions.
5 However, Distinctive Assets’ persistent unlawful behavior and disregard of its own
6 agreement to stop its false associations leaves the Academy no choice.

7 Parties

8 9. Plaintiff Academy of Motion Picture Arts and Sciences is a non-
9 profit corporation organized and existing under the laws of the State of California,
10 with its principal place of business in Los Angeles, California.

11 10. Upon information and belief, Lash Fary is an individual d/b/a
12 Distinctive Assets, and Distinctive Assets LLC is a company, and both have their
13 principle places of business at 913 South Mansfield Avenue, Los Angeles,
14 California 90036.

15 Factual Background

16 **The Academy’s Decades of Goodwill In Its Trademarks**

17 11. The Academy was founded in 1927 as a non-profit organization
18 designed to benefit the then-fledgling film industry in the United States. Shortly
19 after its founding, the Academy decided to create an award to celebrate the highest
20 standards in motion picture filmmaking as a method of advancing the industry; the
21 presentation of this award would become known as the “Academy Awards” or
22 “Oscars.”

23 12. The Academy presented the first Oscars in 1929. The ceremony
24 proved so popular that it was broadcast live, via radio, the following year.
25 Continued demand for the Oscar awards ceremony resulted in annual live
26 broadcasts, eventually switching from radio to television in 1953. The Academy’s
27 first color television broadcast occurred in 1966, and the first international
28 broadcast, outside of Canada, took place in 1969. In 2015, the Academy Awards

1 were televised live in more than 225 countries and territories worldwide. As part of
2 protecting the extraordinary goodwill that the Academy has earned over the years,
3 the Academy established standards for both the awards it makes and the awards
4 ceremony itself.

5 13. As recognition of the Academy's work grew, the Academy began to
6 provide additional services to benefit both the film industry and the public. To
7 better promote and protect those services, the Academy filed for a number of
8 trademark registrations. First, the Academy obtained registration of the OSCAR®
9 word mark with the Patent and Trademark Office on the Principal Register in 1975,
10 pursuant to Certificate of Registration No. 1,096,990. A few years later, in 1978,
11 the Academy applied for registration of the ACADEMY AWARDS® word mark,
12 which it obtained pursuant to Certificate of Registration No. 1,103,859. (See
13 Exhibit E, consisting of a true and correct copy of these registrations).

14 14. The Academy's early registrations primarily covered the Academy's
15 annual telecast, but by 1979, the Academy was also creating booklets, press kits,
16 chronologies, and other consumer media. As a result, the Academy obtained a
17 registration for OSCAR® pursuant to Certificate of Registration No. 1,118,751, in
18 connection with these new products and services. Over time, the scope of
19 Academy's works continued to grow, spurred on by both the Academy's investment
20 and new technologies, such as home video, and its unique caps, shirts, sweatshirts,
21 and jackets commemorating the Oscar ceremonies. To cover these additional uses,
22 the Academy applied for and obtained new registrations for OSCAR®, OSCARS®,
23 ACADEMY AWARD®, and ACADEMY AWARDS® during the 1980s, 1990s,
24 and early 2000s. These additional registrations include: OSCAR®, registered
25 pursuant to Certificate of Registration Nos. 1,996,585, and 2,021,582; OSCARS®,
26 registered pursuant to Certificate of Registration No. 1,528,890; ACADEMY
27 AWARDS®, registered pursuant to Certificate of Registration Nos. 1,880,473 and
28 1,956,313; and ACADEMY AWARD® is registered pursuant to Certificate of

1 Registration No. 2,245,965. All of these registrations are in the principal register.
2 (See Exhibit F, consisting of a true and correct copy of these registrations).

3 Collectively, these trademarks are referred to herein as the “Academy’s Marks.”

4 15. Meanwhile, the popularity of the Oscars has increased. In 2015, 36.6
5 million viewers watched the telecast of the awards ceremony, and advertisers paid a
6 higher premium for 30-second commercials during that ceremony than they did for
7 the Super Bowl. (See “The Oscars Beat The Super Bowl In Advertising Premium,”
8 posted Forbes.com on February 20, 2015, a true and correct copy of which is
9 attached as Exhibit G). The terms “Oscar” and “Academy Awards” in connection
10 with the Academy’s uses of those terms, are now both entries in the Oxford English
11 Dictionary and the Encyclopedia Britannica—and the Academy is recognized in
12 both publications. Consistent with the general fame of the Academy’s Marks, in
13 ruling for the Academy on one of its trademarks, the Ninth Circuit Court of Appeals
14 held that “the Oscar . . . mark should be given the strongest possible protection
15 against infringement.” *See Academy of Motion Picture Arts and Sciences. v.*
16 *Creative House Promotions, Inc.*, 944 F.2d 1446, 1455 (9th Cir. 1991).

17 16. The Academy’s work also goes beyond the celebratory evening of
18 the Oscars ceremony. To advance the arts and sciences of motion pictures, to foster
19 educational activities between the public and the industry, and to encourage an
20 appreciation of the motion picture as an art form and a vocation, the Academy
21 engages in many other activities. Among them, it established an Academy
22 scholarship fund for film students, founded a fellowship program to aid aspiring
23 screenwriters, and created the National Film Information Service to ensure that
24 historians, students, and the public have access to the Academy’s vast library of
25 historic primary source documents and materials. Since 2012, the Academy has
26 been working to build a museum devoted to motion pictures, which will curate and
27 present work from Oscar winners, nominees, and film makers from around the
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1 globe. The Academy continues to strive to do more, and better, and more quickly,
2 in addressing the ongoing concerns of the film making community.

3 **Distinctive Assets’ Unlawful Promotion Of Its “Gift Bags” In 2015**

4 17. In the weeks leading up to the 2015 Oscars, Distinctive Assets began
5 promoting its 2015 gift bags using the Academy’s OSCARS trademark to draw
6 attention to itself and the products it was promoting by falsely creating an
7 association with the Academy’s Oscars ceremony.

8 18. On information and belief, in February 2015, Distinctive Assets
9 released press statements advertising its infringing gift bags as “Everyone Wins At
10 the Oscars®! Nominee Gift Bags.” As a result of Distinctive Assets’ efforts, press
11 outlets credited Distinctive Assets’ gift bags as being associated with the Academy
12 even though they are not. For example, *Vanity Fair* posted a story to its website that
13 stated “the Academy Awards have figured out a way to help wash the bitter taste of
14 defeat right out of the mouths of those who don’t get to take home a little gold man
15 to sit on their mantel: The gift bag[.]” (*See* “Oscar Gift Bags: Take A Peek Inside
16 This Year’s \$168,000 Bounty” *VanityFair.com*, February 11, 2015, a true and
17 correct copy of which is attached as Exhibit H). Similarly, CBS affiliate Kiss FM
18 reported that, because of the gift bags, “nominees will not be leaving the ceremony
19 empty handed.” (“Oscar Gift Bag Is Filled With \$125,000 Worth of Goodies,”
20 *CBSLocal.com*, February 19, 2015, a true and correct copy of which is attached as
21 Exhibit I).

22 19. Distinctive Assets also engaged in a social media campaign using the
23 phrase “Everyone Wins At The Oscars®,” followed by links to the individual
24 products carried in the infringing gift bags, as shown here:
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Distinctive Assets
@DAssets



For the non-winning nominees leaving Los Angeles, the 2015 "Everyone Wins At The Oscars®" Gift Bag includes Heat...

fb.me/22VyS7PEb



11:41 AM - 23 Feb 2015



Distinctive Assets
@DAssets



The 2015 "Everyone Wins At The Oscars®" Gift Bag includes New York Times Bestseller, "An Invisible Thread," by...

fb.me/3RWJG4JTf



9:09 AM - 23 Feb 2015

The Academy’s Efforts to Stop Distinctive Assets’ Unlawful Promotion Of Its Infringing Bags

20. Deeply concerned about the confusion Distinctive Assets was spreading, the Academy’s legal counsel wrote Distinctive Assets on or about February 17, 2015, to inform it that it “is critical that no one be confused into believing that your gift bags are associated with or have any connection with the Academy.” To avoid litigation, the Academy requested that Distinctive Assets confirm in writing that:

- All of Distinctive Assets’ future communications concerning the gift bags will clearly communicate that the Academy does not award, sponsor,

1 endorse, or provide these gift bags and that any reporting about the gift
2 bags must include that disclaimer.

- 3 - Mentions of Distinctive Assets' 2015 gift bags for OSCAR® nominees
4 will contain the disclaimer that these gift bags have no affiliation with the
5 OSCARS® or the Academy. The disclaimer should be at least the size of
6 the smallest font used elsewhere in the main text of the page or image.
- 7 - Distinctive Assets will not make any association, explicitly or implied, that
8 its gift bags are associated with the OSCARS®, the ACADEMY
9 AWARDS®, or The Academy in any advertising, marketing, or promotion
10 going forward.

11 (*See* Feb. 17, 2015 Letter, a true and correct copy of which is attached as Exhibit J.)

12 21. Distinctive Assets did not respond to the February 17, 2015 letter. It
13 continued to blatantly infringe. The week *after* receiving the Academy's letter,
14 Distinctive Assets posted on Facebook about its gift bags using the hashtag
15 "#OscarGiftBag"—a phrase that deliberately and falsely associates Distinctive
16 Assets' gift bag with the Oscars. On or about February 27, 2015, the Academy
17 again contacted Distinctive Assets, explaining that the Academy would pursue legal
18 relief if it did not receive a response. (*See* Feb. 27, 2015 letter, a true and correct
19 copy of which is attached as Exhibit K.)

20 22. On or about March 6, 2015, Distinctive Assets finally responded
21 through a letter from counsel. The letter represented that Distinctive Assets "will not
22 purposefully make an association between its gift bags and AMPAS going
23 forward[,]" and specified that "it will no longer use the tagline 'Everyone Wins At
24 the Oscars®.'" (*See* March 6, 2015 Letter, a true and correct copy of which is
25 attached as Exhibit L.)

26 23. Concerned that Distinctive Assets might have the misimpression that
27 simply eliminating the Academy's trademarks from the gift bag taglines would be
28 sufficient, the Academy wrote back on or about March 23, 2015. That letter

1 explained that eliminating that particular tagline was a necessary, but not sufficient
2 step, to ending Distinctive Assets' trademark infringement. The Academy made
3 clear that Distinctive Assets was not permitted either to imply a relationship with the
4 Academy or to use any of the Academy's trademarks, not just the OSCARS mark, in
5 future advertising for Distinctive Assets' gift bags. (See March 23, 2015 Letter, a
6 true and correct copy of which is attached as Exhibit M.)

7 24. On or about March 25, 2015 Distinctive Assets replied and stated
8 that it "expressly agree[d] not to purposefully make an association between its gift
9 bags and [the Academy] going forward," and further acknowledged that "not
10 making an association with [the Academy] includes not using [the Academy's] other
11 intellectual property in taglines" for gift bags. (See March 25, 2015 Letter, a true
12 and correct copy of which is attached as Exhibit N.)

13 **Distinctive Assets' Persistent Unlawful Promotion Of Its Infringing Bags In**
14 **2016**

15 25. The parties' 2015 correspondence leaves no doubt that as of 2016
16 Distinctive Assets was fully aware of the Academy's trademark rights, the
17 Academy's position about Distinctive Assets' unlawful use, and Distinctive Assets'
18 own commitment not to create an association between its bags and the Academy or
19 the Oscars. But with the 2016 Academy Awards weeks away, Distinctive Assets
20 again chose to promote its products and services using the Academy's trademarks to
21 create confusion about its (lack of) relationship with the Oscars and the Academy.

22 26. This year, Distinctive Assets opted for the tagline "Everyone Wins
23 Nominee Gift Bags in Honor of the Oscars®." Its continued use of the same
24 trademark in its tagline blatantly violates Distinctive Assets' agreement "not to
25 purposefully make an association between its gift bags" and the Academy, and it is
26 likely to cause confusion as to the Academy's non-association with Distinctive
27 Assets and its gift bags.

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1 27. But Distinctive Assets’ new tagline is hardly the only means it is
2 now using to advance the false idea that it is connected to the Academy and the
3 Oscars. On or about February 5, 2016, Distinctive Assets used the Academy’s
4 OSCARS trademark on its social media Twitter account to describe its gift bag and
5 posted a link to an article about the bags titled “Inside the Absurd \$200K Oscar Gift
6 Bag: Vapes, a Trip To Israel, and a Vampire Breast Lift.”



16 Neither Distinctive Assets’ post nor the article itself contained any disclaimer
17 clarifying that Distinctive Assets has no connection to the Oscars or the Academy.
18 To the contrary, the article refers to Distinctive Assets, as “the company in charge of
19 putting together the luxurious gift bags for nominees.” (See “Inside the Absurd
20 \$200K Oscar Gift Bag” posted to DailyBeast.com on February 5, 2016, a true and
21 correct copy of which is attached as Exhibit O).

22 28. A wave of media reports on “Oscar gift bags” quickly followed
23 Distinctive Assets’ announcement. For example, TMZ.com reported that “all the
24 Oscar nominees get a stupid amount of swag *in the official gift bag*.” (“Oscar Gift
25 Bag” TMZ.com, February 5, 2016, a true and correct copy of which is attached as
26 Exhibit P). Similarly, *The New York Post* posted an article referring to “the gift
27 bags *at the Academy awards*,” with no mention of Distinctive Assets or clarification
28 that the Academy does not give away gift bags at the Academy Awards. (See

1 “Gwyneth Paltrow Obviously Loves the \$250 Oscars Toilet Paper,” NYPost.com,
2 February 8, 2016, a true and correct copy of which is attached as Exhibit Q). The
3 BBC’s Newsbeat website reported that “[a]s well as a gold statuette . . . all this
4 year’s Oscar winners will leave with a goodie bag worth more than £130,000.”
5 (“Oscars 2016: A look inside the £150,000 goodie bag,” BBC.co.uk, a true and
6 correct copy of which is attached as Exhibit R). As with the other reports, the BBC
7 did not clarify that the Academy does not give out “goodie bags.” And multiple
8 news outlets, including CNBC, Fox News, *The Washington Post*, *The Toronto Star*,
9 *The National Post*, *Forbes*, *The New York Daily News*, and *Hollywood Reporter*
10 have all used the exact phrase “Oscar Swag Bag” to describe Distinctive Assets’
11 infringing gift bag—strongly suggesting that Distinctive Assets has used or
12 encouraged use of this term in further violation of its agreement not to use the
13 Academy’s trademarks to describe its bags.

14 29. The media coverage reveals that Distinctive Assets appears to be
15 taking no steps to stop wrongfully implying a relationship with the Academy. An
16 article posted to *Self*’s website on February 10, 2016, describes Distinctive Assets as
17 “the company in charge of the swag bags,” with no explanation that it was not
18 retained by, does not work for, and has no connection with, the Academy. (*See*
19 “Peek Inside This Year’s \$200,000 Oscars Gift Bags” posted to Self.com, February
20 10, 2016, a true and correct copy of which is attached as Exhibit S). As a result, a
21 reader is left with the false impression that the Academy retained Distinctive Assets
22 for the purpose of providing gift bags to Oscar Nominees.

23 30. Distinctive Assets further reinforces the false impression that it has a
24 connection with the Oscars through false advertising. Distinctive Assets’ website
25 states that it has “exclusive involvement with many major award shows,” even
26 though it has *no* involvement with the Oscars. *See* Ex. D. It also touts that its “Gift
27 Lounges are held ON SITE at the award show or event and provides an opportunity
28 for our clients to represent their line and personally interact with celebrities (and

1 press).” *Id.* But Distinctive Assets has no “gift lounge” on the grounds of the Oscar
2 ceremony.

3 31. Distinctive Assets’ continued use of the Academy’s trademarks not
4 only infringes the Academy’s trademarks, but it is also likely to dilute the
5 distinctiveness of the Academy’s famous trademarks and tarnish their goodwill.
6 Press about the 2016 gift bags has focused on both the less-than-wholesome nature
7 of some of the products contained in the bags, which purportedly include a \$250
8 marijuana vaporizer, a \$1,900 “vampire breast lift,” skin treatments by Park Avenue
9 plastic surgeons valued at more than \$5,500, a \$250 sex toy, and \$275 Swiss-made
10 toilet paper, and the unseemliness of giving such high value gifts, including trips
11 costing tens of thousands of dollars, to an elite group of celebrities. *See, e.g.* Exs. B,
12 O, and P. For example, Forbes.com ran an article entitled “The \$200,000 Oscars
13 Gift Bag: The Business of Vibrators, Breast Lifts, and More Absurd Swag.” (a true
14 and correct copy of which is attached as Exhibit T.) The article unequivocally
15 associates the Academy with the “absurd” contents of the bag and does nothing to
16 dispel the association.

17 32. Distinctive Assets’ wrongful conduct has harmed the Academy,
18 including by causing it to spend significant resources responding to inquiries and
19 comments relating to its lack of affiliation with Distinctive Assets and its gift bags
20 and trying to correct the misimpressions Distinctive Assets has created. Some of the
21 harm Distinctive Assets has caused cannot be quantified, including harm to the
22 goodwill of the Academy’s trademarks and the Academy’s reputation.

23 FIRST CLAIM FOR RELIEF

24 (Trademark Infringement -- 15 U.S.C. § 1114(1), 15 U.S.C. § 1125(a))

25 33. The Academy incorporates herein by reference each and every
26 allegation contained in paragraphs 1 through 32, above, as though set forth herein.

27 34. The Academy has long used its OSCAR®, OSCARS®, ACADEMY
28 AWARD®, and ACADEMY AWARDS® word marks in interstate commerce in

1 connection with the advertising and promotion of the annual Academy Awards®
2 ceremony and to recognize motion pictures honored by the Academy for excellence.
3 The Academy's Marks are registered on the principle register.

4 35. In connection with its promotion of its services and others' goods
5 and services, Distinctive Assets has used and is using in commerce reproductions,
6 copies, facsimiles, and depictions of the Academy's Marks in a manner likely to
7 cause confusion or mistake or to deceive. Distinctive Assets' actions have at all
8 times been without the Academy's consent.

9 36. Distinctive Assets' acts violate 15 U.S.C. § 1114(1) and 15 U.S.C.
10 § 1125(a).

11 37. Distinctive Assets has been unjustly enriched as a direct and
12 proximate result of its harmful conduct, which has also harmed the Academy,
13 including by causing it to spend significant resources responding to inquiries and
14 comments relating to its lack of affiliation with Distinctive Assets and its gift bags
15 and trying to correct the misimpressions Distinctive Assets has created. Pursuant to
16 15 U.S.C. § 1117(a), the Academy is entitled to, and should be awarded defendants'
17 profits and any damages sustained by the Academy, and the costs of this action.

18 38. Because defendants have willfully used the Academy's Marks in a
19 manner calculated to promote the sale or distribution of its goods and services, and
20 because this is an exceptional case, the Academy is entitled to recover three times
21 defendants' profits and the Academy's damages, and reasonable attorney's fees
22 pursuant to 15 U.S.C. § 1117.

23 39. Distinctive Assets' acts have damaged, and will irreparably damage,
24 the Academy. The Academy has no adequate remedy at law for all of these wrongs
25 and injuries. The damage to the Academy includes harm to its goodwill and
26 reputation in the marketplace that money damages cannot compensate. The
27 Academy is, therefore, entitled to a preliminary and permanent injunction
28 restraining and enjoining Distinctive Assets and its agents, servants, and employees,

1 and all persons acting thereunder, in concert therewith or on their behalf, from using
2 the Academy's Marks, or any mark including those Marks, in connection with the
3 sale, offering for sale, distribution or advertising of goods or services, or in any
4 manner likely to cause confusion or mistake or to deceive the trade or public as to
5 the source or origin of defendants' products.

6 SECOND CLAIM FOR RELIEF

7 (California Common Law Trademark Infringement)

8 40. The Academy repeats and incorporates by reference each and every
9 allegation of paragraphs 1 through 39 above, as though fully set forth herein.

10 41. The Academy commenced use of the Academy's Marks before any
11 and all use of confusingly similar marks by Distinctive Assets.

12 42. Distinctive Assets is using and has used the Academy's Marks in
13 commerce in connection with its promotion of its services and others' goods and
14 services without the Academy's consent.

15 43. There is a likelihood of confusion in the minds of the public that
16 Distinctive Assets is affiliated with the Academy.

17 44. Distinctive Assets has been unjustly enriched as a direct and
18 proximate result of this harmful conduct, and the Academy has suffered, and will
19 continue to suffer, harm as it is caused to spend resources responding to inquiries
20 and comments relating to its lack of affiliation with Distinctive Assets and its gift
21 bags. Accordingly, the Academy is entitled to receive damages, including, but not
22 limited to restitution, actual, and exemplary damages.

23 45. Distinctive Assets' repeated, intentional use of the Academy's Marks
24 is malicious, particularly in light of Distinctive Assets' express representations to
25 the Academy that it would cease using the Academy's Marks. Accordingly,
26 pursuant to California Civil Code § 3294(a), the Academy is entitled to punitive
27 damages.

28

1 Distinctive Assets for advertising purposes, whether a company will decide to
2 become a sponsor of the Oscars, whether a person will serve as a presenter at the
3 Oscars, and whether a person will view the Oscars.

4 51. Distinctive Assets has made misrepresentations on its website and on
5 social media accounts, and thus in connection with interstate commerce.

6 52. The Academy is likely to be directly harmed by Distinctive Assets'
7 false and misleading statements due to a lessening of goodwill associated with the
8 Academy, and Distinctive Assets has been unjustly enriched as a direct and
9 proximate result of its harmful conduct. Pursuant to 15 U.S.C. § 1117(a), the
10 Academy is entitled to, and should be awarded defendants' profits, and any
11 damages sustained by the Academy, and the costs of this action.

12 53. Because defendants have willfully made false representations in a
13 manner calculated to promote the sale or distribution of its goods and services, and
14 because this is an exceptional case, the Academy is entitled to recover three times
15 defendants' profits and the Academy's damages, and reasonable attorney's fees
16 pursuant to 15 U.S.C. § 1117.

17 54. Distinctive Assets' acts have damaged, and will irreparably damage,
18 the Academy. The Academy has no adequate remedy at law for all of these wrongs
19 and injuries. The damage to the Academy includes harm to its goodwill and
20 reputation in the marketplace that money damages cannot compensate. The
21 Academy is, therefore, entitled to a preliminary and permanent injunction
22 restraining and enjoining Distinctive Assets and its agents, servants, and employees,
23 and all persons acting thereunder, in concert therewith or on their behalf, from
24 making additional false and misleading statements in commerce.

25 FOURTH CLAIM FOR RELIEF

26 (False Advertising California Business and Professions Code § 17500 *et seq.*)

27 55. The Academy repeats and incorporates by reference each and every
28 allegation of paragraphs 1 through 54 above, as though fully set forth herein.

1 56. Distinctive Assets intended to sell its advertising services to the
2 public, as demonstrated through its media contacts, website, press releases, and
3 statements.

4 57. Distinctive Assets disseminated information that was untrue and
5 misleading.

6 58. Distinctive Assets knew, or should have known, that these statements
7 were false, as Distinctive Assets does not have an exclusive relationship with the
8 Academy or the Oscars, or indeed, any connection at all, and does not provide gift
9 bags on the premises of the Oscars ceremony during the event.

10 59. Distinctive Assets' false statements were calculated to affect the sale
11 of Distinctive Assets' services, which depend upon exploiting the Academy's
12 goodwill for publicity

13 60. As a direct and proximate result of Distinctive Assets' false
14 statements, Distinctive Assets has obtained unlawful profits, or has otherwise been
15 unjustly enriched. Accordingly, the Academy is entitled to receive damages,
16 including, but not limited to restitution and disgorgement of Distinctive Assets'
17 profits.

18 61. Distinctive Assets' acts complained of herein have damaged, and
19 will irreparably damage, the Academy. The Academy has no adequate remedy at
20 law for all of these wrongs and injuries. The damage to the Academy includes harm
21 to its goodwill and reputation in the marketplace that money damages cannot
22 compensate. The Academy is, therefore, entitled to a preliminary and permanent
23 injunction restraining and enjoining defendants and their agents, servants, and
24 employees, and all persons acting thereunder, in concert therewith or on their behalf,
25 from making additional false and misleading statements in commerce.

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1 FIFTH CLAIM FOR RELIEF

2 (Trademark Dilution -- 15 U.S.C. § 1125(c) and Cal. Bus. & Prof. Code § 14247)

3 62. The Academy repeats and incorporates by reference each and every
4 allegation of paragraphs 1 through 61 above, as though fully set forth at length.

5 63. The Academy’s Marks are famous and distinctive. The Academy’s
6 annual awards ceremony, known to the public as the “Oscars” or the “Academy
7 Awards,” has occurred annually since 1929. The Academy’s Marks are registered
8 on the Principal Trademark Register. The marks are so well recognized that they
9 have their own definitions in the Oxford English Dictionary and entries in the
10 Encyclopedia Britannica. Recognition and viewership of the Academy’s awards
11 ceremony is so widespread that publications have compared it to the Super Bowl.

12 64. Distinctive Assets’ use in commerce of the Academy’s Marks in
13 connection with their services and commercial activities is likely to dilute the
14 distinctive quality of the Academy’s Marks in violation of Section 43(c) of the
15 Lanham Act, 15 U.S.C. § 1125(c) and Cal. Bus. & Prof. Code § 14247.

16 65. Distinctive Assets has offered and is offering for sale and selling
17 advertising services through use of the Academy’s Marks in connection with the
18 distribution of unseemly “gift bags” and products scorned in the press, including
19 products that facilitate the consumption of illegal drugs, sex toys, and outlandishly
20 priced toilet paper.

21 66. Distinctive Assets’ use in commerce of the Academy’s Marks in the
22 service of promoting these goods is likely to tarnish the goodwill associated with the
23 Academy’s Marks in violation of Section 43(c) of the Lanham Act, 15 U.S.C.
24 § 1125(c).

25 67. Distinctive Assets has been unjustly enriched as a direct and
26 proximate result of this harmful conduct, and the Academy has suffered, and will
27 continue to suffer, harm as it is caused to spend resources responding to inquiries
28 and comments relating to Distinctive Assets’ gift bags. Accordingly, the Academy

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DEMAND FOR JURY TRIAL

Plaintiff Academy of Motion Picture Arts and Sciences hereby demands trial by jury pursuant to Fed. R. Civ. Proc. § 38(b).

DATED: February 16, 2016

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By /s/ Margret M. Caruso

Margret M. Caruso
Attorneys for Plaintiff
The Academy of Motion Picture Arts and
Sciences