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2017 FEB 17 P 5:15

PLAINTIFFS

DEFENDANTS

PARAMOUNT PICTURES CORPORATION

ANTHONY PUZO, AS EXECUTOR OF THE ESTATE OF MARIO PUZO

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

Gage Spencer & Fleming LLP
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Los Angeles, CA 90067

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE) (DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

17 U.S.C. secs. 101 et seq. (copyright infrgmt); 15 U.S.C. secs 1114 and 1125 (trademark infrgmt and false designat'n)

Has this or a similar case been previously filed in SDNY at any time? No [x] Yes [] Judge Previously Assigned

If yes, was this case Vol. [] Invol. [] Dismissed. No [] Yes [] If yes, give date & Case No.

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

ACTIONS UNDER STATUTES

Table with columns: TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes categories like CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PERSONAL INJURY, PERSONAL PROPERTY, LABOR, IMMIGRATION, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

Check if demanded in complaint:

[] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ OTHER JUDGE DOCKET NUMBER

Check YES only if demanded in complaint
JURY DEMAND: [] YES [x] NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN X IN ONE BOX ONLY)

ORIGIN

- 1 Original Proceeding
- 2a. Removed from State Court
- 2b. Removed from State Court AND at least one party is pro se.
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from (Specify District)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judge Judgment

(PLACE AN X IN ONE BOX ONLY)

BASIS OF JURISDICTION

- 1 U.S. PLAINTIFF
- 2 U.S. DEFENDANT
- 3 FEDERAL QUESTION (U.S. NOT A PARTY)
- 4 DIVERSITY

IF DIVERSITY, INDICATE CITIZENSHIP BELOW. (28 USC 1322, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF	DEF	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF	DEF	INCORPORATED <u>and</u> PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF	DEF
	[]	[]		[]	[]		[]	[]
CITIZEN OF ANOTHER STATE	[]	[]	INCORPORATED <u>or</u> PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[]	[]	FOREIGN NATION	[]	[]
	[]	[]		[]	[]		[]	[]

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Paramount Pictures Corporation (Los Angeles, California)

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Anthony Puzo, as representative of Estate of Mario Puzo (New York, New York)

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: WHITE PLAINS MANHATTAN (DO NOT check either box if this a PRISONER PETITION.)

DATE 2/17/12 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO

[x] YES (DATE ADMITTED Mo. _____ Yr. 1993)

Attorney Bar Code # 0411

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge MAG. JUDGE PECK is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PARAMOUNT PICTURES CORPORATION,

Plaintiff,

- against -

ANTHONY PUZO, AS EXECUTOR OF THE
ESTATE OF MARIO PUZO,

Defendant.
-----X

RECEIVED

FEB 17 2012

U.S. DISTRICT COURT SDNY

12 CIV 1268
Civil Action No. _____

COMPLAINT



NATURE OF THIS ACTION

1. This civil action is based on, and seeks injunctive relief and damages to redress, ongoing and prospective violations of the federal Copyright Act, 17 U.S.C. § 101 et seq., and of the federal trademark laws, 15 U.S.C. § 1114 and 1125(a). It also seeks to protect the integrity and reputation of *The Godfather* trilogy, one of the most acclaimed and beloved artistic works of the past 50 years.

2. In 1969, plaintiff Paramount Pictures Corporation (“Paramount”) purchased from the now-deceased author Mario Puzo (“Puzo”) the copyright interest in Puzo’s novel *The Godfather*. By written agreements executed on November 28, 1969, Puzo granted to Paramount, among other rights, “any and all copyrights therein and all rights now known or hereafter accruing therein and thereto, forever and throughout the world, together with the sole and exclusive right to use said work, in whole or in part, in whatever manner the Purchaser [i.e., Paramount] may desire, including, but not limited to, the sole and exclusive right: to make and cause to be made literary and dramatic and other versions and adaptations of every kind and character of said work or any part or parts thereof and/or any or all of the characters created

therein . . . [and] to adapt, arrange, change, interpolate in, transpose, add to and subtract from said work to such extent as the Purchaser, in its sole discretion, may desire in connection with any use which the Purchaser may make of said work.”

3. After acquiring the aforementioned rights, Paramount adapted *The Godfather* novel into three highly-acclaimed motion pictures, directed by Francis Ford Coppola.

4. Puzo died in 1999. After his death, the Puzo Estate expressed interest in publishing additional *Godfather* “sequel novels,” to be written by new authors.

5. In 2002, in an attempt to accommodate the Puzo Estate while preserving the integrity of Paramount’s *Godfather* franchise, Paramount and the Puzo Estate entered into a Memorandum of Agreement, under which the parties acknowledged that Paramount had no objection to the Puzo estate granting Random House the right to publish one (but only one) “Sequel Novel” to *The Godfather*. The Memorandum of Agreement also stated that “The Estate contends that it shall have the right to publish subsequent novels after the Sequel Novel without the consent of [Paramount] and [Paramount] contends to the contrary. Both parties reserve their rights and contentions with respect to subsequent sequels. Notwithstanding the foregoing, the Estate acknowledges that [Paramount] is the sole and exclusive owner of all motion picture, television, and allied rights in and to the Novel [i.e., *The Godfather*] and the Sequel Novel.” A first sequel novel, entitled *The Godfather Returns*, was published in 2004 pursuant to said Memorandum of Agreement.

6. In 2006, without Paramount’s knowledge or authorization, the Puzo Estate published a second sequel novel, entitled *The Godfather’s Revenge*, which received mediocre reviews and suffered weak sales. Far from properly honoring the legacy of *The Godfather*, the unauthorized *The Godfather’s Revenge* tarnished it, and in the process, also misled consumers

in connection with advertising, marketing, and promotional material related to the first and second sequel novels. On information and belief, the Puzo Estate intends to use the Godfather Marks in connection with the advertising, marketing, and promotion of the third sequel novel. The Puzo Estate is, on information and belief, aware of Paramount's ownership of the Godfather Marks. Yet it did not seek, and has not sought, permission from Paramount before using Paramount's protected trademark interests for commercial gain.

11. Accordingly, Paramount brings this action for damages, injunctive, and declaratory relief against the Puzo Estate in connection with its ongoing infringement of Paramount's copyright and trademark interests.

PARTIES

12. Plaintiff Paramount Pictures Corporation is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in Los Angeles, California.

13. Defendant Anthony Puzo is the son of Mario Puzo and is the duly appointed representative of the Estate of Mario Puzo (the "Puzo Estate"). Defendant is a resident of New York.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over Paramount's claims under 28 U.S.C. § 1331 and 1338, and 15 U.S.C. § 1121, in that these copyright and trademark claims arise under the laws of the United States. This Court has personal jurisdiction over Defendant because he is a resident of the State of New York, and because the Puzo Estate has committed and has announced plans to commit numerous infringing acts in the State of New York and this District.

15. Venue in this Court is proper pursuant to 28 U.S.C. § 1391 and 1400(a), in that, on information and belief, Defendant may be found in this District and a substantial part of the events or giving rise to the claim occurred and are occurring in this District.

FIRST CAUSE OF ACTION FOR FEDERAL COPYRIGHT INFRINGEMENT

16. Paramount realleges and incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

17. Paramount owns the copyright, and all rights, title, and interest thereto, in the novel *The Godfather*, including the right to create derivative works thereto. The 1969 agreements between Paramount and Puzo reserved to Paramount all rights in *The Godfather* novel except the publication rights in that original novel. Puzo did not reserve any rights to publish a sequel to *The Godfather*. Thus, after execution of the 1969 agreements, Puzo retained no rights of any kind in *the Godfather* novel except for the right to publish that original novel in book form.

18. In its 2002 Memorandum of Agreement with the Puzo Estate, Paramount agreed not to object to the Puzo Estate's publication of a single sequel novel. However, the Memorandum of Agreement did not grant the Puzo Estate the right to publish subsequent sequels or to create any other derivative works based upon *The Godfather*.

19. After the execution of the 2002 Memorandum of Agreement, among its other rights, Paramount continued to own all rights in and to *The Godfather* novel except for (a) Puzo's reserved right to publish the original novel and (b) the Puzo Estate's right to publish a single Paramount-authorized sequel novel.

20. In addition to its copyright in the novel *The Godfather*, Paramount also owns the entire copyright in the films *The Godfather*, *The Godfather Part II*, and *The Godfather Part III*.

Collectively, Paramount's rights in the novel *The Godfather* and the three *The Godfather* films are referred to herein as the "Godfather Works."

21. The Godfather Works are original works of authorship owned by Paramount and are copyrightable subject matter under the laws of the United States.

22. Paramount is the owner of registered copyrights for each of the Godfather Works. Copies of the relevant registrations are attached to this complaint as Exhibits 1 through 4.

23. The Puzo Estate has infringed upon, has continued to infringe upon, and has declared its intention to further infringe upon Paramount's copyright interests in the Godfather Works, by publishing the second sequel novel *The Godfather's Revenge* and by announcing its intention to publish *The Family Corleone*.

24. The Puzo Estate had access to at all relevant times, and did access, each of the Godfather Works.

25. The Puzo Estate has infringed upon, and has announced its intention to continue to infringe upon, Paramount's copyright interest in the Godfather Works through the unauthorized and unlawful creation of derivative works substantially similar to the Godfather Works, violating Paramount's exclusive right to create derivative works granted under 17 U.S.C. § 106(2).

26. Paramount is informed and believes and on that basis alleges that the Puzo Estate had full knowledge that its acts were and are wrongful and unlawful. Nonetheless, the Puzo Estate has continued to infringe on Paramount's copyrights, throughout the United States, even after Paramount informed the Puzo Estate by letter and other correspondence that its actions constituted wrongful infringement. Upon information and belief, the Puzo Estate's acts of copyright infringement were committed both with knowledge that their conduct constituted copyright infringement and for purposes of commercial advantage or private financial gain.

Thus, the Puzo Estate's copyright infringement was and is willful pursuant to 17 U.S.C. §§ 501 et seq.

27. By reason of the foregoing, Paramount has suffered damages in an amount to be determined at trial, and is entitled, at its election, to either (a) all damages suffered by Paramount, along with all gains, profits, and advantages derived by the Puzo Estate from its acts of infringement, plus exemplary or punitive damages in amounts to be proven at trial, (b) statutory damages as provided for in the Copyright Act. Paramount is also entitled to attorney's fees as available by law.

28. Paramount has suffered and will suffer irreparable harm as a result of the Puzo Estate's infringing conduct, and lacks an adequate remedy at law for the injury threatened by the Puzo Estate, in that Paramount will suffer intangible injuries, including the loss of customer goodwill, damage to consumer perceptions about the Godfather Works, the loss of control over its copyrighted works, and injury to Paramount's reputation with its licensees and its customers. Paramount is entitled under the Copyright Act to provisional and permanent relief enjoining the Puzo Estate's infringements.

SECOND CAUSE OF ACTION FOR TRADEMARK INFRINGEMENT
(15 U.S.C. § 1114)

29. Paramount realleges and incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

30. Paramount owns various United States trademark registrations that include the distinctive design of *The Godfather* trademark, including USPTO Reg. Nos. 1,674,068; 1,707,295; 3,159,811; 3,159,762; 3,432,881; 3,432,882; 3,437,926; and 3,628,838. Copies of the relevant trademark registrations are set forth on Exhibit 5 hereto. Paramount has also filed several trademark applications in connection with related marks, including USPTO Application

Nos. 85387110, 77769544, 77795896, and 77795903. Collectively, these registrations and applications are referred to herein as the “Godfather Marks.”

31. The Puzo Estate’s actions and planned actions in connection with the sale, offering for sale, distribution, and/or advertising of goods bearing the Godfather Marks in interstate commerce, without the consent of Paramount, constitutes infringement of the Godfather Marks and has caused or is likely to cause a likelihood of confusion, mistake, or deception.

32. Paramount has suffered damages as a result of the Puzo Estate’s acts of infringement in an amount to be proven at trial. In addition, as a result of the Puzo Estate’s acts of infringement, Paramount has suffered and, unless those acts are enjoined by the Court, will continue to suffer irreparable harm for which it has no adequate remedy at law.

33. The Puzo Estate’s actions have been knowing, intentional, wanton, and willful, entitling Paramount to treble damages, statutory damages, attorneys’ fees, and costs.

THIRD CAUSE OF ACTION FOR FALSE DESIGNATION OF ORIGIN
(15 U.S.C. § 1125(a))

34. Paramount realleges and incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

35. The Puzo Estate’s actions and planned actions in connection with the sale, offering for sale, distribution, and/or advertising of goods bearing the Godfather Marks in interstate commerce, without the consent of Paramount, constitutes a false designation of origin and has caused or is likely to cause a likelihood of confusion, mistake, and deception as to source, sponsorship, affiliation, and/or connection in the minds of the public.

36. Paramount has suffered damages as a result of the Puzo Estate’s acts of unfair competition in an amount to be proven at trial. In addition, as a result of the Puzo Estate’s acts

of unfair competition, Paramount has suffered and, unless those acts are enjoined by the Court, will continue to suffer irreparable harm for which it has no adequate remedy at law.

37. The Puzo Estate's actions have been knowing, intentional, wanton, and willful, entitling Paramount to treble damages, statutory damages, attorneys' fees, and costs.

FOURTH CAUSE OF ACTION FOR DECLARATORY RELIEF

38. Paramount realleges and incorporates by reference each of the foregoing paragraphs as though fully set forth herein.

39. An actual controversy has arisen and now exists between Paramount, on the one hand, and the Puzo Estate, on the other, as to whether the Puzo Estate's publication of sequel novels to *The Godfather* infringes upon Paramount's copyright interests in the Godfather Works.

40. An actual controversy has also arisen and now exists between Paramount, on the one hand, and the Puzo Estate, on the other, as to whether the Puzo Estate's use of the Godfather Marks in connection with the promotion and marketing of *The Godfather's Revenge* and *The Family Corleone* constitutes trademark infringement and/or unfair competition and false designation of origin under the federal trademark laws.

41. By reason of the foregoing, Paramount is entitled to a declaration that the sequel works *The Godfather's Revenge* and *The Family Corleone* infringe upon Paramount's copyright interests in the Godfather Works.

42. Paramount is also entitled to a declaration that the Puzo Estate's unauthorized use of the Godfather Marks constitutes trademark infringement and/or unfair competition and false designation of origin under the federal trademark laws.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- i. A declaration that the Puzo Estate has infringed Paramount's copyright interests under 17 U.S.C. 501, and that the Puzo Estate has infringed Paramount's trademark interests under 15 U.S.C. §§ 1114 & 1125;
- ii. A temporary restraining order;
- iii. A preliminary and permanent injunction;
- iv. Statutory and compensatory damages according to proof;
- v. Punitive and exemplary damages for the willful, reckless, and wanton nature of the Puzo Estate's acts;
- x. An award of costs, expenses, and attorney's fees;
- xi. All further relief as is just and proper, in the determination of the Court.

Dated: New York, New York
February 17, 2012

GAGE SPENCER & FLEMING LLP

By: 

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