

# **EXHIBIT A**

STATE OF INDIANA	)	HAMILTON COUNTY SUPERIOR COURT
	)	ROOM NO. 1
	) SS:	
COUNTY OF HAMILTON	)	CAUSE NUMBER: 29D01-0707-PL- 763

DANIEL D. WHITNEY	)
	)
Plaintiff,	)
	)
v.	)
	)
BIG DOG HOLDINGS, INC.	)
	)
Defendant.	)

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 FILED  
 CLERK OF SUPERIOR COURT  
 HAMILTON COUNTY INDIANA

**COMPLAINT**

For this Complaint against Defendant, Big Dog Holdings, Inc. ("Big Dog"), Plaintiff, Daniel D. Whitney ("Whitney") hereby alleges as follows:

**SUBSTANCE OF THE ACTION**

1. This case involves infringement upon the distinctive and famous GIT-R-DONE® trademark used by Whitney in his comedic act and in connection with promotional merchandise sold by Whitney's licensing agent. Defendant's infringement arises out of the unauthorized use of the GIT-R-DONE® trademark on clothing items bearing reproductions of the famous GIT-R-DONE® mark ("infringing items").
2. Defendant's use of the GIT-R-DONE® mark on the infringing items violates Whitney's rights as the owner of the mark. Whitney asserts claims for federal trademark infringement, federal trademark dilution, false designation of origin or sponsorship, false advertising, and trade dress infringement pursuant to the Lanham Act, as well as common law trademark infringement, unfair competition, conversion, forgery, counterfeiting, and deception. Whitney seeks a permanent injunction preventing Defendant from using the

distinctive GIT-R-DONE® trademark, along with an award of damages, treble damages, profits, attorney's fees and costs.

### **THE PARTIES**

3. Whitney is an individual residing in the state of Oklahoma.
4. Defendant Big Dog is a business organized and existing under the laws of California. Big Dog may be served through its registered agent, Anthony J. Wall, 121 Gray Avenue, Santa Barbara, CA 93101.

### **JURISDICTION AND VENUE**

5. This Court has original jurisdiction over this action pursuant to Ind. Code § 33-28-1-2 and Ind. Code § 33-33-29-7.
6. Defendant has submitted to this Court's jurisdiction by doing business in the state of Indiana.
7. Venue properly lies in this Court because a substantial part of the events giving rise to the claims alleged herein arose in Hamilton County, Indiana.

### **GENERAL ALLEGATIONS**

#### **Whitney's Trademark Rights**

8. Whitney, more commonly known as LARRY THE CABLE GUY®, is an award-winning comedian and entertainer. Whitney has performed in concert tours, DVDs, comedy albums, television series and feature films. With his signature proclamation of "GIT-R-DONE!", Whitney has made a name for himself in the entertainment industry and with consumers.
9. Relative to his entertainment business, Whitney is the exclusive owner of multiple federally registered trademarks, including registrations for the word mark GIT-R-

DONE®. These registrations are active and unrevoked, and constitute *prima facie* evidence of Whitney's ownership of the marks.

10. The GIT-R-DONE® trademark is distinctive and famous.
11. Whitney is engaged in the sale and/or licensing of promotional merchandise, including clothing items, bearing the GIT-R-DONE® trademark in Indiana and elsewhere.
12. Whitney maintains strict control over the quality and nature of his products and items bearing the GIT-R-DONE® trademark.
13. Whitney, his management company, and his licensing agent have all invested considerable time and money in advertising the GIT-R-DONE® trademark throughout Indiana and elsewhere. As a result of extensive worldwide advertising, the GIT-R-DONE® mark is immediately recognizable.
14. Whitney has acquired substantial goodwill among consumers.
15. As a result of such goodwill and immediate recognition, and as a result of extensive advertising, the GIT-R-DONE® trademark has become highly valuable.

**Defendant's Infringement of Whitney's Rights**

16. Subsequent to Whitney's development, use and registration of the GIT-R-DONE® trademark, Defendant began using the GIT-R-DONE® mark or a confusingly similar variation of the mark.
17. Specifically, Defendant has manufactured, distributed, advertised and/or sold merchandise bearing the following variations of the GIT-R-DONE® mark: "GIT 'ER DONE" and "GET 'ER DONE".
18. Defendant has not received permission from Whitney, or anyone acting on his behalf, to manufacture, produce, advertise or sell any item bearing the GIT-R-DONE® trademark.

19. By manufacturing, producing, advertising and/or selling items bearing the GIT-R-DONE® mark without permission, Defendant has attempted to profit from and capitalize on the intellectual property rights and substantial goodwill developed by Whitney.
20. Defendant has willfully and intentionally manufactured, produced, advertised and/or sold products bearing the GIT-R-DONE® trademark with knowledge that the GIT-R-DONE® mark is a federally registered trademark owned by Whitney.
21. Defendant manufactured, produced, advertised and/or sold items bearing the GIT-R-DONE® mark with knowledge that Defendant's use of the GIT-R-DONE® trademark was unauthorized.
22. The manufacture, production, advertisement, and/or sale of items bearing the GIT-R-DONE® trademark created a likelihood of consumer confusion.
23. Defendant used the GIT-R-DONE® mark with the intent to confuse and/or deceive consumers.

**COUNT I**  
**FEDERAL TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114**

24. Whitney incorporates herein by reference the allegations contained in all previous paragraphs of this Complaint.
25. Defendant has used in commerce, and in connection with the sale of goods, a reproduction, counterfeit, copy or colorable imitation of the GIT-R-DONE® trademark.
26. Defendant has reproduced, counterfeited, copied or imitated the GIT-R-DONE® mark and applied the marks to labels, signs, prints, packages, receptacles or advertisements intended to be used in commerce.
27. Defendant's use of the GIT-R-DONE® trademark creates the likelihood of confusion, mistake and/or deception among consumers.

28. Defendant willfully infringed upon the GIT-R-DONE® trademark. Defendant intended to confuse, mistake or deceive consumers.
29. Defendant used the reproductions of the GIT-R-DONE® trademark with knowledge that the marks were copies and/or counterfeits.
30. Consumers were initially interested and lured to the infringing items by the similarity to the GIT-R-DONE® mark.
31. As a result of Defendant's infringement, Whitney has suffered irreparable harm to the valuable GIT-R-DONE® trademark. Unless Defendant is permanently enjoined from further infringement, Whitney will continue to suffer irreparable harm.
32. A permanent injunction is necessary to prevent Defendant from further interference with the GIT-R-DONE® mark.
33. As a result of Defendant's infringement under 15 U.S.C. § 1114, Whitney has been injured and is entitled to damages, including but not limited to, Defendant's profits from the sale of all infringing goods, actual damages, treble damages, statutory damages, costs of suit and attorney's fees.

**COUNT II**  
**TRADEMARK DILUTION UNDER 15 U.S.C. § 1125(c)**

34. Whitney incorporates by reference the allegations contained in all previous paragraphs of this Complaint.
35. The GIT-R-DONE® trademark is distinctive and famous.
36. Defendant adopted the GIT-R-DONE® trademark after the mark became famous.
37. Defendant's use of the GIT-R-DONE® trademark caused dilution of the mark.
38. Defendant's use of the GIT-R-DONE® trademark is commercial and in commerce.
39. Defendant's use of the GIT-R-DONE® trademark has weakened the unique association



of the mark with Whitney.

40. As a result of Defendant's dilution under 15 U.S.C. § 1125(c), Whitney has suffered irreparable harm to the valuable GIT-R-DONE® trademark. Unless Defendant is permanently enjoined from further dilution, Whitney will continue to suffer irreparable harm.
41. A permanent injunction is necessary to prevent Defendant from further interference with the GIT-R-DONE® mark.
42. Defendant's dilution of the GIT-R-DONE® mark has caused Whitney damages, including, but not limited to, Defendant's profits from the sale of all infringing goods, actual damages, treble damages, statutory damages, costs of suit and attorney's fees.

**COUNT III  
FALSE DESIGNATION OF ORIGIN OR SPONSORSHIP,  
FALSE ADVERTISING AND  
TRADE DRESS INFRINGEMENT UNDER 15 U.S.C. § 1125(a)**

43. Whitney incorporates by reference the allegations contained in all previous paragraphs of this Complaint.
44. Defendant used the GIT-R-DONE® trademark in commerce and in connection with the sale of goods or services.
45. Defendant's use of the GIT-R-DONE® mark is likely to cause confusion or mistake and/or is likely to deceive consumers as to the affiliation, connection or association of Defendant with Whitney; or as to the origin, sponsorship, or approval of Defendant's goods by Whitney.
46. Defendant's conduct constitutes false or misleading descriptions, false advertising, and false designations of the origin and/or sponsorship of Defendant's goods and constitutes trade dress infringement in violation of § 43(a) of the Lanham Act, as amended, 15

U.S.C. § 1125(a).

47. As a result of Defendant's conduct, Whitney has suffered irreparable harm to the valuable GIT-R-DONE® trademark. Unless Defendant is permanently enjoined from further false designations, false advertisement and trade dress infringement, Whitney will continue to suffer irreparable harm.
48. A permanent injunction is necessary to prevent Defendant from further interference with the GIT-R-DONE® mark.
49. Defendant's violations of 15 U.S.C. §1125(a) have caused Whitney to incur damages, including, but not limited to, Defendant's profits from the sale of all infringing goods, actual damages, treble damages, statutory damages, costs of suit and attorney's fees.

**COUNT IV**  
**COMMON LAW TRADEMARK INFRINGEMENT**

50. Whitney incorporates by reference the allegations contained in all previous paragraphs of this Complaint.
51. The GIT-R-DONE® mark is immediately recognizable and famous throughout the world.
52. Products bearing the GIT-R-DONE® mark have acquired a reputation among consumers for quality and excellence, and the GIT-R-DONE® trademark has come to symbolize that reputation.
53. Defendant, with knowledge of and with intentional disregard for the rights of Whitney, manufactured, produced, advertised and/or sold items using the GIT-R-DONE® mark or a confusingly similar imitation thereof.
54. Defendant's use of the GIT-R-DONE® mark has created the likelihood of confusion among consumers.



55. Defendant's acts constitute trademark infringement and willful infringement under the common law.
56. As a result of Defendant's conduct, Whitney has suffered irreparable harm to the valuable GIT-R-DONE® trademark. Unless Defendant is permanently enjoined from further infringement, Whitney will continue to suffer irreparable harm.
57. A permanent injunction is necessary to prevent Defendant from further interference with the GIT-R-DONE® mark.
58. As a result of Defendant's infringement, Whitney has suffered damages, including, but not limited to, Defendant's profits from the sale of all infringing goods, actual damages, treble damages, statutory damages, costs of suit and attorney's fees.

**COUNT V**  
**UNFAIR COMPETITION**

59. Whitney incorporates by reference the allegations contained in all previous paragraphs of this Complaint.
60. Defendant's unlawful and unauthorized use of the GIT-R-DONE® trademark constitutes unfair competition with Whitney.
61. Defendant's conduct creates consumer confusion as to the source and/or origin of the infringing items.
62. Defendant's use of the GIT-R-DONE® trademark is an attempt to interfere with Whitney's business relationship with his consumers and to trade upon Whitney's goodwill.
63. As a result of Defendant's conduct, Whitney has suffered irreparable harm to the valuable GIT-R-DONE® trademark. Unless Defendant is permanently enjoined from further unfair competition, Whitney will continue to suffer irreparable harm.

64. A permanent injunction is necessary to prevent Defendant from further interference with the GIT-R-DONE® mark.

65. Defendant's unfair competition has caused Whitney to incur damages, including but not limited to, Defendant's profits from the sale of the infringing products, actual damages, costs of suit and attorney's fees.

**COUNT VI**  
**CONVERSION UNDER IND. CODE § 35-43-4-3**

66. Whitney incorporates by reference the allegations contained in all previous paragraphs of this Complaint.

67. Defendant knowingly or intentionally exerted unauthorized control over the property of Whitney.

68. Defendant sold items bearing the GIT-R-DONE® mark without Whitney's consent and in a manner or to an extent other than that to which Whitney had consented.

69. Defendant knowingly or intentionally exerted unauthorized control over the goodwill developed by Whitney.

70. As a result of Defendant's conversion, Whitney was damaged and seeks an award of actual damages, treble damages, costs and attorney's fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1.

**COUNT VII**  
**FORGERY UNDER IND. CODE § 35-43-5-2(b)**

71. Whitney incorporates by reference the allegations contained in the previous paragraphs of this Complaint.

72. Defendant, with the intent to defraud, made, uttered, and/or possessed a written instrument in such a manner that it purports to have been made by Whitney.

73. Whitney did not give Defendant the authority to make or possess the infringing items.

74. As a result of Defendant's forgery, Whitney was damaged and seeks an award of actual damages, treble damages, costs and attorney's fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1.

**COUNT VIII**  
**COUNTERFEITING UNDER IND. CODE § 35-43-5-2(a)**

75. Whitney incorporates herein by reference the allegations contained in all previous paragraphs of this Complaint.

76. Defendant knowingly or intentionally made and/or uttered a written instrument in such a manner that it purports to have been made by Whitney.

77. Whitney did not give Defendant the authority to make or utter the infringing items.

78. As a result of Defendant's counterfeiting, Whitney was damaged and seeks an award of actual damages, treble damages, costs and attorney's fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1.

**COUNT IX**  
**DECEPTION UNDER IND. CODE § 35-43-5-3**

79. Whitney incorporates herein by reference the allegations contained in all previous paragraphs of this Complaint.

80. Defendant knowingly or intentionally made a false or misleading written statement with the intent to obtain property.

81. Defendant, with the intent to defraud, misrepresented the identity or quality of property.

82. As a result of Defendant's deception, Whitney was damaged and seeks an award of actual damages, treble damages, costs and attorney's fees pursuant to the Indiana Crime Victim's Act, Ind. Code § 34-24-3-1.

**PRAYER FOR RELIEF**

WHEREFORE, Whitney prays for relief against the Defendant as follows:

- a. That Defendant, its officers, partners, agents, servants, affiliates, employees, attorneys, and representatives, and all those in privity or acting in consent or participation with Defendant, and each and all of them, be permanently enjoined from:
  - (i) Imitating, copying, reproducing, or using, in any manner, the GIT-R-DONE® trademark, or any other mark confusingly similar to the GIT-R-DONE® trademark;
  - (ii) Committing any act that dilutes or is likely to dilute the distinctiveness of the GIT-R-DONE® trademark;
  - (iii) Committing any act that is likely to create the impression that Defendant's business or products are in any way sponsored by, approved of or otherwise affiliated or connected with Whitney;
  - (iv) Importing, manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any product or service using any simulation, reproduction, counterfeit, copy or imitation of any GIT-R-DONE® trademark or trade dress; and
  - (v) instructing, 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 (iv) above.
  
- b. That Defendant be required to:
  - (i) Deliver to Whitney for destruction all goods and materials bearing GIT-R-

DONE® trademark which Defendant has in its possession;

- (ii) Recall and deliver to Whitney for destruction all goods and materials bearing the GIT-R-DONE® trademark that have been previously distributed or sold;
- (iii) Pay compensatory damages to Whitney in an amount to be determined at trial for the injuries Whitney has sustained as a consequence of the acts complained of;
- (iv) Pay Whitney treble damages, or alternatively, Defendant's profits trebled, whichever is greater;
- (v) Pay all of Whitney's litigation expenses, including reasonable attorneys' fees and costs of this action;
- (vi) Pay interest to Whitney, including pre-judgment interest on the foregoing sums; and
- (vii) File with this Court and serve on Whitney an affidavit setting forth in detail the manner and form of Defendant's compliance with the terms of this Court's orders.

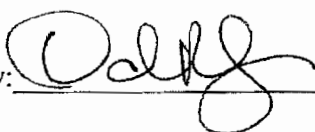
- c. That Whitney be awarded such other and further relief as the Court may deem just and proper.

**DEMAND FOR TRIAL JURY**

Whitney hereby respectfully requests a trial by jury in this cause, and for all other relief just and proper in the premises.

Respectfully submitted,

Darlene R. Seymour  
Attorney # 23133-49

By:  \_\_\_\_\_

1292 E. 91<sup>st</sup> Street  
Indianapolis, IN 46240