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8 Attorneys for Defendants and Counterclaim-Plaintiffs  
 BEASTIE BOYS, ADAM HOROVITZ and BROOKLYN DUST  
 9 MUSIC; and Counterclaim-Plaintiffs MICHAEL DIAMOND and  
 DECHEN YAUCH, executor of the estate of ADAM YAUCH

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

12  
 13 GOLDIEBLOX, INC.,  
 Plaintiff,

14 v.

15 ISLAND DEF JAM MUSIC GROUP, A DIV.  
 16 OF UMG RECORDINGS, INC.;  
 BROOKLYN DUST MUSIC; BEASTIE  
 17 BOYS; SONY/ATV MUSIC PUBLISHING  
 GROUP LLC; UNIVERSAL MUSIC  
 18 PUBLISHING, INC.; RICK RUBIN; AND  
 ADAM HOROVITZ,  
 19 Defendants.

20 BEASTIE BOYS, a New York partnership;  
 21 MICHAEL DIAMOND, an individual;  
 ADAM HOROVITZ, an individual; DECHEN  
 22 YAUCH, as executor of the estate of ADAM  
 YAUCH, deceased; and MICHAEL  
 23 DIAMOND. ADAM HOROVITZ. and

Case No. 4:13-CV-05428-DMR

- (1) ANSWER, WITH AFFIRMATIVE DEFENSES;
- (2) COUNTERCLAIMS FOR:
  - (a) COPYRIGHT INFRINGEMENT [17 U.S.C. §§ 501, *et seq.*];
  - (b) INFRINGEMENT OF REGISTERED TRADEMARK [15 U.S.C. § 1114(a)];
  - (c) TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN, PASSING OFF, FALSE ADVERTISING, FALSE ENDORSEMENT, AND UNFAIR COMPETITION [15 U.S.C. § 1125(a)];

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**DESIGNATION OF ORIGIN AND FALSE ADVERTISING [Cal. Bus. & Prof. Code §§ 17200 and 17500, et seq.];**

**(f) MISAPPROPRIATION OF RIGHT OF PUBLICITY [California Common Law];**

**(g) VIOLATION OF NEW YORK CIVIL RIGHTS LAW [§ 51]; AND**

**(h) AN ACCOUNTING;**

**(3) DEMAND FOR JURY TRIAL.**

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For their Answer to the Complaint by GoldieBlox, Inc. (“**Plaintiff**”), Defendants Brooklyn Dust Music, Beastie Boys and Adam Horovitz (collectively, the “**Beastie Boys Defendants**”) admit, deny, and aver as follows:

**I.**

**ANSWER OF THE BEASTIE BOYS DEFENDANTS**

1. Paragraph 1 of the Complaint includes a number of legal conclusions to which no response is required. The Beastie Boys Defendants otherwise deny all other allegations contained in Paragraph 1 of the Complaint.

2. Paragraph 2 of the Complaint includes a number of legal conclusions to which no response is required. The Beastie Boys Defendants otherwise deny all other allegations contained in Paragraph 2 of the Complaint.

3. The Beastie Boys Defendants admit that their position is that the video advertisement posted on Plaintiff’s website and other video sharing websites featuring the Beastie Boys’ song

1           4.       Paragraph 4 of the Complaint is exclusively composed of legal conclusions to which  
2 no response is required. To the extent an answer is required, the Beastie Boys Defendants deny the  
3 allegations.

4           5.       The Beastie Boys Defendants deny knowledge or information sufficient to form a  
5 belief concerning the truth of the allegations contained in Paragraph 5 of the Complaint.

6           6.       The Beastie Boys Defendants deny knowledge or information sufficient to form a  
7 belief concerning the truth of the allegations contained in Paragraph 6 of the Complaint.

8           7.       The Beastie Boys Defendants deny the allegations contained in Paragraph 7 of the  
9 Complaint.

10          8.       The Beastie Boys Defendants deny the allegations contained in Paragraph 8 of the  
11 Complaint.

12          9.       The Beastie Boys Defendants deny knowledge or information sufficient to form a  
13 belief concerning the truth of the allegations contained in Paragraph 9 of the Complaint.

14          10.      The Beastie Boys Defendants deny knowledge or information sufficient to form a  
15 belief concerning the truth of the allegations contained in Paragraph 10 of the Complaint.

16          11.      The Beastie Boys Defendants deny knowledge or information sufficient to form a  
17 belief concerning the truth of the allegations contained in Paragraph 11 of the Complaint.

18          12.      The Beastie Boys Defendants admit the allegations in Paragraph 12 of the Complaint.

19          13.      Paragraph 13 of the Complaint is exclusively composed of legal conclusions to which  
20 no response is required. To the extent an answer is required, the Beastie Boys Defendants deny the  
21 allegations.

22          14.      Paragraph 14 of the Complaint includes a number of legal conclusions to which no  
23 response is required. The Beastie Boys Defendants otherwise deny all other allegations contained in

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1           16.     The Beastie Boys Defendants deny knowledge or information sufficient to form a  
2 belief concerning the truth of the allegations contained in Paragraph 16 of the Complaint.

3           17.     The Beastie Boys Defendants deny knowledge or information sufficient to form a  
4 belief concerning the truth of the allegations contained in Paragraph 17 of the Complaint, and, to the  
5 extent Paragraph 17 of the Complaint describes the contents of the GoldieBlox Advertisement or  
6 other advertisements produced by Plaintiff, the Beastie Boys Defendants respectfully refer the Court  
7 thereto.

8           18.     The Beastie Boys Defendants deny the allegations contained in Paragraph 18 of the  
9 Complaint, and, to the extent Paragraph 18 describes the contents of the GoldieBlox Advertisement  
10 or the song “Girls” itself, the Beastie Boys Defendants respectfully refer the Court thereto.

11           19.     The Beastie Boys Defendants deny knowledge or information sufficient to form a  
12 belief concerning the truth of the allegations contained in Paragraph 19 of the Complaint, and, to the  
13 extent Paragraph 19 of the Complaint describes the contents of the GoldieBlox Advertisement or the  
14 song “Girls” itself, the Beastie Boys Defendants respectfully refer the Court thereto.

15           20.     The Beastie Boys Defendants deny the allegations contained in Paragraph 20 of the  
16 Complaint.

17           21.     The Beastie Boys Defendants deny the allegations contained in Paragraph 21 of the  
18 Complaint.

19           22.     The Beastie Boys Defendants repeat and reallege their responses to Paragraphs 1  
20 through 21 of the Complaint as though fully set forth herein.

21           23.     Paragraph 23 of the Complaint is exclusively composed of legal conclusions to which  
22 no response is required. To the extent an answer is required, the Beastie Boys Defendants deny the  
23 allegations.

1 26. Paragraph 26 of the Complaint is exclusively composed of legal conclusions to which  
2 no response is required. To the extent an answer is required, the Beastie Boys Defendants deny the  
3 allegations.

4 27. Paragraph 27 of the Complaint is exclusively composed of legal conclusions to which  
5 no response is required. To the extent an answer is required, the Beastie Boys Defendants deny the  
6 allegations.

7 **AFFIRMATIVE DEFENSES**

8 As separate and distinct affirmative defenses to Plaintiff's allegations, the Beastie Boys  
9 Defendants allege as follows:

10 **FIRST AFFIRMATIVE DEFENSE**

11 **[Failure To State A Claim]**

12 1. Plaintiff's Complaint, and each purported claim for relief contained therein, fails to  
13 state a claim upon which relief may be granted.

14 **SECOND AFFIRMATIVE DEFENSE**

15 **[Unclean Hands]**

16 2. Plaintiff's Complaint, and each purported claim for relief contained therein, is barred  
17 by the doctrine of unclean hands.

18  
19 **THIRD AFFIRMATIVE DEFENSE**

20 **[Additional Defenses]**

21 3. The Beastie Boys Defendants reserve the right to assert additional affirmative  
22 defenses as they learn additional facts during the course of this action.

1 the estate of Adam Yauch, deceased (collectively, with the Beastie Boys Defendants, the “**Beastie**  
2 **Boys Parties**”), aver as follows:

3 **Jurisdiction And Venue**

4 1. This action for copyright infringement, unfair competition, misappropriation of the  
5 right of publicity under California common law and violations of the New York Civil Rights Law  
6 arises under the Copyright Laws of the United States 17 U.S.C. §§ 101, *et seq.*, 15 U.S.C. §§ 1051,  
7 *et seq.*, California common law, California statutory law, and New York Civil Rights Law § 51.

8 2. This Court has subject matter jurisdiction under 28 U.S.C. § 1338(a) and (b), under  
9 the Copyright Laws of the United States, 17 U.S.C. §§ 101, *et seq.*, and the Lanham Act, 15 U.S.C.  
10 §§ 1051, *et seq.*, as well as under 28 U.S.C. §§ 1331 and 1367(a).

11 3. Venue in this district is proper under 28 U.S.C. §§ 1400 and 1391(b)(1) and (b)(2).

12 **The Parties**

13 4. Counterclaim-Plaintiff Adam Horovitz, professionally known as “Ad-Rock”  
14 (“**Horovitz**”), is an individual who resides in New York, New York.

15 5. Counterclaim-Plaintiff Michael Diamond, professionally known as “Mike D”  
16 (“**Diamond**”), is an individual who resides in Brooklyn, New York.

17 6. Counterclaim-Plaintiff Dechen Yauch is the executor of the estate of Adam Yauch,  
18 the deceased Beastie Boys member, professionally known as “MCA,” who resided in New York,  
19 New York (“**Yauch**”).

20 7. Counterclaim-Plaintiff Beastie Boys is a New York Partnership, with its principal  
21 place of business in New York, New York, and is the business entity which owns or controls, *inter*  
22 *alia*, the performances, sound recording copyrights, trademarks and rights of publicity of Horovitz,  
23 Diamond and Yauch, including their performances, sound recording copyrights, trademarks and

1           9.       Brooklyn Dust is co-owner of the copyright to the musical composition “Girls,”  
2           which has been registered with the United States Copyright Office, Registration No. PA0000344518  
3           (the “**Copyrighted Work**”).

4           10.       Upon information and belief, Counterclaim-Defendant GoldieBlox, Inc.  
5           (“**GoldieBlox**”) is a Delaware Corporation with its headquarters and principal place of business in  
6           Oakland, California.

7                                           **Facts Applicable To All Counterclaims**

8           11.       As an integral part of GoldieBlox’s marketing campaign to sell books and toys that it  
9           claims are designed to “inspire the next generation of female engineers” (a profession defined by  
10           innovation and original thinking), GoldieBlox has engaged in the systematic infringement of  
11           intellectual property from numerous popular music groups, including Beastie Boys.

12           12.       As part of that systematic campaign of infringement, GoldieBlox has created a series  
13           of video advertisements set to well-known songs from popular artists in an effort to achieve the  
14           company’s primary goal of selling toys.

15           13.       Upon information and belief, GoldieBlox has produced and published videos that  
16           infringe upon popular songs by Beastie Boys, Queen, Daft Punk, Kaskade, Krewella, Avicii, Slam,  
17           k.flay and Trevor Guthrie.

18           14.       In some instances, GoldieBlox has altered the lyrics of the popular songs featured in  
19           its video advertisements in order to tailor those songs to the company’s goal of selling toys.

20           15.       One of the popular songs that GoldieBlox altered for use in its video advertisements  
21           is “Girls,” the seventh and final single from the Beastie Boys’ 1987 debut album *Licensed to Ill*.  
22           “Girls” is a sarcastic anthem.

23           16.       Upon information and belief, on or about November 18, 2013 GoldieBlox published

1           17.     The GoldieBlox Advertisement posted on the GoldieBlox website and Youtube.com,  
2 as well as substantially all of GoldieBlox’s social media posts promoting the GoldieBlox  
3 Advertisement, used and explicitly referred to the Beastie Boys’ name and identity.

4           18.     The “Beastie Boys” name and identity is readily associated with Horovitz, Diamond  
5 and Yauch, both ~~individual~~ individually and collectively and have come to signify the musical,  
6 artistic, and other creations by Horovitz, Diamond and Yauch individually, as well as collectively  
7 under the name “Beastie Boys”, and to identify each of them as individual members of the  
8 recording and performing group Beastie Boys.

9           19.     The Beastie Boys Parties are the owners of the common law and registered trademark  
10 BEASTIE BOYS® for use with, among other things, musical sound recordings and video  
11 recordings featuring musical performances. The BEASTIE BOYS® mark is registered with the  
12 United States Patent & Trademark Office as U.S. Reg. No. 4,197,406, and has been in continuous  
13 use since 1982. That registration is valid and subsisting under 15 U.S.C. §§ 1051, *et seq.*

14           20.     The GoldieBlox Advertisement is of a commercial nature and used the Copyrighted  
15 Work and the BEASTIE BOYS® mark to advertise GoldieBlox’s products, without any of the  
16 Beastie Boys Parties’ consent or authorization.

17           21.     The GoldieBlox Advertisement featured the Beastie Boys musical composition  
18 “Girls” with lyrics modified to become a “jingle” to sell GoldieBlox’s products.

19           22.     The GoldieBlox Advertisement promptly became a viral hit on the internet, garnering  
20 over 8 million views on Youtube.com alone in just ten days. The GoldieBlox Advertisement also  
21 received massive coverage in the press, which primarily focused on its apparently, but not in fact,  
22 approved use of the Beastie Boys’ song.

23           23.     Upon information and belief, the publishing of the GoldieBlox Advertisement



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1 company's product line being featured as one of the most popular toy lines for the 2013 holiday  
2 season on the internet shopping website Amazon.com.

3 25. Upon information and belief, on or about November 20, 2013, a representative from  
4 an advertising agency contacted Universal Music Publishing Group (the administrator of Brooklyn  
5 Dust's and Horovitz's copyrights in the Copyrighted Work) to ascertain whether GoldieBlox had  
6 obtained a license from the Beastie Boys Parties and their publisher or their administrator for the use  
7 of the underlying song "Girls" in the GoldieBlox Advertisement. Upon information and belief, the  
8 request was made because the advertising agency was in the process of submitting the GoldieBlox  
9 Advertisement to a competition, sponsored by Intuit Inc., to win a 30-second television commercial  
10 spot during the 2014 Super Bowl.

11 26. On November 21, 2013, counsel for the Beastie Boys Parties contacted counsel for  
12 GoldieBlox to inquire about the company's use of the Beastie Boys song in the GoldieBlox  
13 Advertisement.

14 27. On that very same day, GoldieBlox filed this action seeking declaratory and  
15 injunctive relief.

16 28. Upon information and belief, GoldieBlox achieved and continues to achieve  
17 additional publicity, press coverage, and, upon information and belief, greater sales of its products,  
18 as a direct result of the Beastie Boys' perceived affiliation with the GoldieBlox Advertisement.

19 29. Unfortunately, rather than developing an original advertising campaign to inspire its  
20 customers to create and innovate, GoldieBlox has instead developed an advertising campaign that  
21 condones and encourages stealing from others. Accordingly, the Beastie Boys Parties assert the  
22 following counterclaims.

23 **FIRST COUNTERCLAIM FOR RELIEF**

1 composition “Girls” in the GoldieBlox Advertisement infringes Brooklyn Dust’s exclusive rights  
2 granted by the Copyright Act, 17 U.S.C. §§ 101, *et seq.*

3 32. Each unauthorized reproduction, derivative work, distribution to the public, and  
4 public performance of Beastie Boys’ copyrighted musical composition constitutes an individual act  
5 of infringement of Brooklyn Dust’s exclusive rights under the Copyright Act, 17 U.S.C. §§ 501, *et*  
6 *seq.*

7 33. GoldieBlox’s conduct has been intentional and willful.

8 34. As a result of GoldieBlox’s conduct, the Beastie Boys Parties have suffered and will  
9 continue to suffer injury in an amount not presently known. The Beastie Boys Parties are entitled to  
10 recover from GoldieBlox the damages and lost profits they have sustained as a result of  
11 GoldieBlox’s unlawful acts of copyright infringement and to recover from GoldieBlox the gains,  
12 profits, and advantages GoldieBlox has obtained as a result of the wrongful conduct alleged herein,  
13 or, at their election, an award of statutory damages, pursuant to 17 U.S.C. § 504.

14 35. The Beastie Boys Parties have no adequate remedy at law. Unless GoldieBlox is  
15 permanently enjoined from committing the unlawful acts of copyright infringement as set forth  
16 above, the Beastie Boys Parties will continue to suffer irreparable harm.

17 **SECOND COUNTERCLAIM FOR RELIEF**

18 **[Infringement Of Registered Trademark, 15 U.S.C. §§ 1114(1)(a)]**

19 36. The Beastie Boys Parties repeat and reallege the allegations contained in paragraphs  
20 1 through 35 of these Counterclaims as though fully set forth herein.

21 37. GoldieBlox has used the federally registered BEASTIE BOYS® mark in commerce  
22 with the GoldieBlox Advertisement and in connection with the sale of GoldieBlox’s products,  
23 without the Beastie Boys Parties’ consent or authorization. The Beastie Boys Parties own the

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1 property and monies and obtaining profits, benefits, and advantages belonging to the Beastie Boys  
2 Parties, for GoldieBlox's own unlawful purposes and benefit. The BEASTIE BOYS® mark is  
3 strong and unique, inherently distinctive, famous, and protectable without proof of secondary  
4 meaning.

5 38. The Beastie Boys Parties have invested decades of time and effort in creating  
6 consumer recognition of the BEASTIE BOYS® mark and to ensure that the public, not only in the  
7 United States but throughout the world, associates that mark with their integrity and their distinctive  
8 music and performing style, as well as with the services provided and products designed or created  
9 by the Beastie Boys.

10 39. As a result of the wide renown acquired by the BEASTIE BOYS® mark, the Beastie  
11 Boys' worldwide reputation for its integrity, distinctive music and performing style, as well as with  
12 the services provided and products designed or created by the Beastie Boys, and the wide  
13 geographic distribution and extensive sale of various Beastie Boys' products distributed under the  
14 BEASTIE BOYS® mark, that mark has acquired significant secondary meaning and fame in the  
15 minds of the purchasing public. The purchasing public immediately identifies the goods and  
16 services offered under the BEASTIE BOYS® mark with a single source. Therefore, the BEASTIE  
17 BOYS® mark, and the goodwill associated therewith, are of inestimable value to the Beastie Boys  
18 Parties.

19 40. ~~On~~ Upon information and belief, GoldieBlox's unauthorized use of the BEASTIE  
20 BOYS® mark has caused confusion and mistake and has mislead and deceived the public into  
21 believing that GoldieBlox's goods and services are associated with or authorized by the Beastie  
22 Boys Parties, when in fact they are not.

23 41. GoldieBlox's use of the BEASTIE BOYS® mark in interstate commerce constitutes

1 43. Upon information and belief, GoldieBlox, in engaging in the conduct described  
2 herein, willfully intended to trade on the reputation of the BEASTIE BOYS® mark, and to cause  
3 injury to the Beastie Boys Parties.

4 44. As a direct and proximate result of GoldieBlox's unlawful acts as described herein,  
5 the Beastie Boys Parties have suffered injury to their business, goodwill, and property, in an amount  
6 to be determined at trial. The Beastie Boys Parties are further entitled to recover from GoldieBlox  
7 the gains, profits, and advantages that GoldieBlox has obtained as a result of the wrongful conduct  
8 alleged herein.

9 45. The Beastie Boys Parties have no adequate remedy at law. Unless GoldieBlox is  
10 permanently enjoined from committing the unlawful acts as set forth above, the Beastie Boys Parties  
11 will continue to suffer irreparable harm.

12 46. Upon information and belief, GoldieBlox committed the acts as herein alleged  
13 willfully, maliciously and oppressively with a willful disregard of the harm that would be suffered  
14 by the Beastie Boys Parties. The Beastie Boys Parties therefore are further entitled to an award of  
15 enhanced damages and to recover their attorneys' fees pursuant to 15 U.S.C. § 1117(a).

16 **THIRD COUNTERCLAIM FOR RELIEF**

17 **[Trademark Infringement, False Designation Of Origin, Passing Off, False Advertising, False**  
18 **Endorsement, And Unfair Competition, 15 U.S.C. § 1125(a)]**

19 47. The Beastie Boys Parties repeat and reallege the allegations contained in paragraphs  
20 1 through 46 of these Counterclaims as though fully set forth herein.

21 48. GoldieBlox has used the BEASTIE BOYS® mark as alleged in paragraphs 37-43,  
22 above.

23 49. GoldieBlox's unauthorized use of the BEASTIE BOYS® mark and other non-

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1           50.     Upon information and belief, GoldieBlox committed these acts with the intent of  
2 causing confusion and mistake and of misleading and deceiving the public into believing that the  
3 Beastie Boys Parties' goods and services are associated with or authorized by GoldieBlox.

4           51.     Upon information and belief, GoldieBlox, in engaging in the conduct described  
5 herein, willfully intended to (a) trade on the reputation of the BEASTIE BOYS® mark, (b) falsely  
6 designate the origin of its goods and services, (c) pass off GoldieBlox's goods and services as  
7 originating with or authorized by the Beastie Boys Parties, (d) falsely advertise GoldieBlox's goods  
8 and services, (e) falsely mislead and deceive the public into believing that the Beastie Boys Parties  
9 had endorsed GoldieBlox's goods and services, (f) commit unfair competition, and (g) cause injury  
10 to the Beastie Boys Parties.

11           52.     As a direct and proximate result of GoldieBlox's unlawful acts as described herein,  
12 the Beastie Boys Parties have suffered injury to their business, goodwill, and property, in an amount  
13 to be determined at trial. The Beastie Boys Parties are further entitled to recover from GoldieBlox  
14 the gains, profits, and advantages that GoldieBlox has obtained as a result of the wrongful conduct  
15 alleged herein.

16           53.     The Beastie Boys Parties have no adequate remedy at law. Unless GoldieBlox is  
17 permanently enjoined from committing the unlawful acts as set forth above, the Beastie Boys Parties  
18 will continue to suffer irreparable harm.

19           54.     Upon information and belief, GoldieBlox committed the acts as herein alleged  
20 willfully, maliciously and oppressively with a willful disregard of the harm that would be suffered  
21 by the Beastie Boys Parties. The Beastie Boys Parties therefore are further entitled to an award of  
22 enhanced damages and to recover their attorneys' fees pursuant to 15 U.S.C. § 1117.

23                   **FOURTH COUNTERCLAIM FOR RELIEF**

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1           56.     GoldieBlox has used the BEASTIE BOYS® mark as alleged in paragraphs 37-43,  
2 above.

3           57.     GoldieBlox's unauthorized use of the BEASTIE BOYS® mark and other non-  
4 copyright infringement acts as alleged above in paragraphs 11-29, 37-43, and 48-51 constitute  
5 trademark infringement, false designation of origin, passing off, false advertising, false  
6 endorsement, and unfair competition in violation of California common law.

7           58.     Upon information and belief, GoldieBlox committed these acts with the intent of  
8 causing confusion and mistake and of misleading and deceiving the public into believing that the  
9 Beastie Boys Parties' goods and services are associated with or authorized by GoldieBlox.

10          59.     Upon information and belief, GoldieBlox, in engaging in the conduct described  
11 herein, willfully intended to (a) trade on the reputation of the BEASTIE BOYS® mark, (b) falsely  
12 designate the origin of its goods and services, (c) pass off GoldieBlox's goods and services as  
13 originating with or authorized by the Beastie Boys Parties, (d) falsely advertise GoldieBlox's goods  
14 and services, (e) falsely mislead and deceive the public into believing that the Beastie Boys Parties  
15 had endorsed GoldieBlox's goods and services, (f) commit unfair competition, and (g) cause injury  
16 to the Beastie Boys Parties.

17          60.     As a direct and proximate result of GoldieBlox's unlawful acts as described herein,  
18 the Beastie Boys Parties have suffered injury to their business, goodwill, and property, in an amount  
19 to be determined at trial. The Beastie Boys Parties are further entitled to recover from GoldieBlox  
20 the gains, profits, and advantages that GoldieBlox has obtained as a result of the wrongful conduct  
21 alleged herein.

22          61.     The Beastie Boys Parties have no adequate remedy at law. Unless GoldieBlox is  
23 permanently enjoined from committing the unlawful acts as set forth above, the Beastie Boys Parties

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1 award of punitive damages for the sake of example and by way of punishing GoldieBlox pursuant to  
2 California Civil Code § 3294.

3 **FIFTH COUNTERCLAIM FOR RELIEF**

4 **[Unfair Competition, False Designation Of Origin And False Advertising, Cal. Bus. & Prof.**

5 **Code §§ 17200 And 17500, *et seq.*]**

6 63. The Beastie Boys Parties repeat and reallege the allegations contained in paragraphs  
7 1 through 62 of these Counterclaims as though fully set forth herein.

8 64. GoldieBlox has used the BEASTIE BOYS® mark as alleged in paragraphs 37-43,  
9 above.

10 65. GoldieBlox's unauthorized use of the BEASTIE BOYS® mark and other non-  
11 copyright infringement acts as alleged above in paragraphs 11-29, 37-43, 48-51, and 56-59  
12 constitute unfair competition, false designation of origin, and false advertising in violation of Cal.  
13 Bus. & Prof. Code §§ 17200 and 17500, *et seq.*

14 66. Upon information and belief, GoldieBlox committed these acts with the intent of  
15 causing confusion and mistake and of misleading and deceiving the public into believing that ~~the~~  
16 ~~Beastie Boys Parties'~~ GoldieBlox's goods and services are associated with or authorized by  
17 ~~GoldieBlox~~ the Beastie Boys Parties.

18 67. Upon information and belief, GoldieBlox, in engaging in the conduct described  
19 herein, willfully intended to (a) trade on the reputation of the BEASTIE BOYS® mark, (b) falsely  
20 designate the origin of its goods and services, (c) pass off GoldieBlox's goods and services as  
21 originating with or authorized by the Beastie Boys Parties, (d) falsely advertise GoldieBlox's goods  
22 and services, (e) falsely mislead and deceive the public into believing that the Beastie Boys Parties  
23 had endorsed GoldieBlox's goods and services, (f) commit unfair competition, and (g) cause injury

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1 69. The Beastie Boys Parties have no adequate remedy at law. Unless GoldieBlox is  
2 permanently enjoined from committing the unlawful acts as set forth above, the Beastie Boys Parties  
3 will continue to suffer irreparable harm

4 70. The Beastie Boys Parties are entitled to a permanent injunction pursuant to Cal. Bus.  
5 & Prof. Code §§ 17203 and 17535 restraining GoldieBlox, and its officers, agents, servants and  
6 employees, and all persons in active concert or participation with them, including, but not limited to,  
7 any and all third-party promoters, distributors, exhibitors, and sellers of GoldieBlox's goods and  
8 services, from engaging in any further such acts in violation of California law.

9 **SIXTH COUNTERCLAIM FOR RELIEF**

10 **[Misappropriation Of Right Of Publicity, California Common Law]**

11 71. The Beastie Boys Parties repeat and reallege the allegations contained in paragraphs  
12 1 through 70 of these Counterclaims as though fully set forth herein.

13 72. In connection with the GoldieBlox Advertisement, GoldieBlox used the Beastie Boys  
14 name and identity, which includes the identities of the group's members, to GoldieBlox's advantage,  
15 both commercially and otherwise.

16 73. GoldieBlox did not have the Beastie Boys Parties' consent to use the Beastie Boys  
17 name and identity in connection with the GoldieBlox Advertisement or for any other purpose.

18 74. As a result of GoldieBlox's use of such name and identity—by, among other things,  
19 producing, publishing, disseminating, promoting and broadcasting the GoldieBlox Advertisement  
20 using the name “Beastie Boys”—Beastie Boys and the group's members have suffered injury to  
21 their business, goodwill, and property, in an amount to be determined at trial, and are entitled to  
22 recover from GoldieBlox the gains, profits, and advantages that GoldieBlox has obtained as a result  
23 of the wrongful conduct alleged herein.



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1 oppression, fraud, and malice toward them. Beastie Boys and the group's members therefore are  
2 entitled to an award of punitive damages for the sake of example and by way of punishing  
3 GoldieBlox pursuant to California Civil Code § 3294.

4 **SEVENTH COUNTERCLAIM FOR RELIEF**

5 **[Violation of New York Civil Rights Law § 51]**

6 77. The Beastie Boys Parties repeat and reallege the allegations contained in paragraphs  
7 1 through 76 of these Counterclaims as though fully set forth herein.

8 78. The Beastie Boys Parties' names are recognizable and distinctive and have generated  
9 a great deal of positive publicity, including without limitation, the public response to the sound  
10 recordings and musical compositions that they have created, including, but not limited to, the song  
11 "Girls."

12 79. GoldieBlox has used the Beastie Boys Parties' names within New York for the  
13 purposes of advertising and trade without their permission.

14 80. The Beastie Boys Parties are informed and believe, and on that basis allege, that, in  
15 acting as alleged herein, GoldieBlox has acted knowingly.

16 ~~110)~~ 81. GoldieBlox's actions violated the Beastie Boys Parties' rights under New York Civil  
17 Rights Law § 51.

18 ~~82.111)~~ Accordingly, the Beastie Boys Parties are entitled to exemplary and  
19 consequential damages.

20 **EIGHTH COUNTERCLAIM FOR RELIEF**

21 **[An Accounting]**

22 ~~112)~~ 83. The Beastie Boys Parties repeat and reallege the allegations contained in paragraphs  
23 1 through 81 of these Counterclaims as though fully set forth herein.

1 Parties and cannot be ascertained without an accounting. The information needed to establish that  
2 amount due is peculiarly within the knowledge of GoldieBlox. The Beastie Boys Parties, therefore,  
3 demand an accounting for the aforementioned gains, profits, benefits, advantages, and revenues  
4 wrongfully realized by GoldieBlox for its activities as alleged herein.

5  
6 **PRAYER FOR RELIEF**

7 WHEREFORE, the Beastie Boys Parties pray for judgment as follows:

8 (1) For a permanent injunction enjoining GoldieBlox and its agents, servants, employees,  
9 officers, attorneys, successors, licensees, partners, and assigns, and all other persons acting in  
10 concert with them:

11 ~~(a)114)~~ from all further infringing or unlawful conduct in connection with the  
12 GoldieBlox Advertisement, including, but not limited to, engaging in any further acts of trademark  
13 infringement, unfair competition, false advertising, false endorsement, false designation of origin,  
14 passing off, and unlawful, unfair and fraudulent business practices;

15 ~~115)~~ ~~(b)~~ from all further infringement of the Copyrighted Work;

16 ~~116)~~ ~~(c)~~ from any further use of any individual or collective names, identities or  
17 personalities of the Beastie Boys Parties; and

18 ~~(d)117)~~ requiring removal of the GoldieBlox Advertisement from all places  
19 where it has been stored electronically or otherwise, and destruction of any and all copies of the  
20 GoldieBlox Advertisement;

21 (2) For an award of the Beastie Boys Parties' actual damages and lost profits they have  
22 sustained as a result of GoldieBlox's unlawful acts of copyright infringement and to recover from  
23 GoldieBlox the gains, profits, and advantages GoldieBlox has obtained as a result of the wrongful

1           (4) For an order requiring GoldieBlox to disgorge any and all revenues, gains, profits,  
2 and advantages obtained and to be obtained by GoldieBlox as a result of GoldieBlox's unlawful acts  
3 as described herein;

4           (5) For an order finding that this case is exceptional and awarding enhanced damages  
5 and attorney's fees pursuant to 15 U.S.C. §1117(a);

6           (6) For an order awarding the Beastie Boys Parties their attorneys' fees pursuant to 17  
7 U.S.C. § 505;

8           (7) For an order that GoldieBlox provide the accounting pleaded for above;

9           (8) For an award of punitive damages against GoldieBlox and in favor of the Beastie  
10 Boys Parties;

11          (9) For an order that the Beastie Boys Parties recover their costs from GoldieBlox;

12          (10) For prejudgment and postjudgment interest according to law; and

13          (11) For such other and further relief as the Court deems just and proper.

14  
15 Dated: December 10, 2013

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20  
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22 BEASTIE BOYS, ADAM HOROVITZ and  
23 BROOKLYN DUST MUSIC; and Counterclaim-  
Plaintiffs MICHAEL DIAMOND and DECHEN  
YAUCH, executor of the estate of ADAM YAUCH

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**III.**

**DEMAND FOR JURY TRIAL**

The Beastie Boys Defendants and the Beastie Boys Parties demand a trial by jury as to all issues so triable.

Dated: December 10, 2013

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