

1 Gerald A. Klein – CA State Bar No. 107727
klein@kleinandwilson.com
2 Brian M. Kelly – CA State Bar No. 292222
bkelly@kleinandwilson.com
3 KLEIN & WILSON
A Partnership of Professional Corporations
4 4770 Von Karman Avenue
Newport Beach, California 92660
5 (949) 631-3300; Facsimile (949) 631-3703

6 Attorneys for Plaintiff SWEET JAMES LLP

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11 SWEET JAMES LLP, a limited liability
partnership,

12 Plaintiff,

13 v.

14 LALEZARY LAW FIRM, LLP, a limited
15 liability partnership; SHAWN
16 LALEZARY, an individual; SHERVIN
LALEZARY, an individual; and
DOES 1-10, inclusive

17 Defendants.
18

CASE NO.

**COMPLAINT FOR:
(1) TRADEMARK
MISAPPROPRIATION; (2) UNFAIR
COMPETITION; (3) TRADEMARK
MISAPPROPRIATION; (4) COMMON
LAW MISAPPROPRIATION; AND
(5) UNFAIR COMPETITION;
DEMAND FOR JURY TRIAL**

19 Plaintiff Sweet James LLP, a limited liability partnership (“Plaintiff”) alleges the
20 following against defendant Lalezary Law Firm, LLP, a limited liability partnership;
21 Shawn Lalezary, an individual; Shervin Lalezary, an individual; and Does 1 through 10
22 (collectively “Defendants”).

23 **PARTIES**

24 1. Plaintiff is a limited liability partnership licensed to do business in the State
25 of California with its principal place of business in Newport Beach, California.

26 2. Lalezary Law Firm, LLP is limited liability partnership licensed to do
27 business in the State of California with its principal place of business in Beverly Hills,
28 California.

1 “Sweet James.” Strangers frequently recognize Bergener as “Sweet James” in public.
2 The “Sweet James” trademark has been so successful it has allowed Plaintiff to enter
3 into lucrative referral agreements with prominent personal injury attorneys throughout
4 the United States who are attracted to the strength of the “Sweet James” trademark. The
5 “Sweet James” trademark is so well-known, it is synonymous with Bergener and when
6 the relevant general public hears the name “Sweet James,” they associate the name with
7 Plaintiff and Plaintiff’s legal services.

8 15. Defendants operate a personal injury law firm in Beverly Hills, California
9 that competes with Plaintiff.

10 16. Defendants knowingly and intentionally use Plaintiff’s registered
11 trademark “Sweet James” in commerce by paying Google and/or other internet search
12 engine operators to place advertisements for their law firm on the results page for
13 potential clients who search online for Plaintiff’s registered trademark “Sweet James.”
14 Their purpose in doing so is to confuse the public into believing the services Defendants
15 provide are Plaintiff’s services, when they are not.

16 17. The practice of paying a search engine operator such as Google to place
17 advertisements when internet users search for a particular term is called “search term
18 bidding.” As discussed below, Defendants’ use the “search term bidding” process to
19 confuse the relevant market into believing Defendants and Plaintiff are one in the same.

20 18. Defendants also use other terms and names affiliated with Plaintiff in
21 commerce, such as “James Bergener” and “Sweet James Bergener,” by bidding on those
22 terms to cause the public to believe that when Defendants’ advertisements appear,
23 Defendants and Plaintiff are one in the same.

24 19. But Defendants’ efforts to create confusion goes far beyond advertising
25 placement. When potential clients see Defendants’ advertisements and call Defendants’
26 law firm, Defendants improperly use Plaintiff’s registered trademark “Sweet James”
27 fraudulently representing to those potential clients that Defendants are “part of the Sweet
28 James umbrella.”

1 28. When those potential clients see Defendants’ advertisements and call
2 Defendants’ law firm, Defendants further use Plaintiff’s registered trademark “Sweet
3 James” in commerce by orally and fraudulently representing to those potential clients
4 that Defendants are “part of the Sweet James umbrella.”

5 29. Defendants actions are likely to confuse and do confuse clients because
6 potential clients searching for Plaintiff’s registered trademark “Sweet James,” who then
7 call the number included in Defendants’ advertisement and are told Defendants’ law
8 firm is “part of the Sweet James umbrella,” are likely to believe Defendants are affiliated
9 with Plaintiff when they are not.

10 30. Defendants intended to locate potential clients looking to hire Plaintiff by
11 bidding on the trademarked name and then deceiving these potential clients into
12 believing Defendants were doing business with an affiliate of Plaintiff, when they were
13 not.

14 31. As a result of this wrongful and deceptive conduct, Defendants have
15 unjustly enriched themselves at Plaintiff’s expense by diverting business to Defendants
16 which otherwise would have gone to Plaintiff. Plaintiff is, therefore, entitled to
17 disgorgement of Defendants’ profits from the use of Plaintiff’s registered trademark.

18 32. Defendants’ actions have caused Plaintiff actual damages in an amount to
19 be proven at trial in excess of the jurisdictional minimum of the court.

20 33. In addition to damages, Plaintiff is entitled to an injunction prohibiting
21 Defendants’ use of Plaintiff’s registered trademark “Sweet James,” including in search
22 term bidding and in oral representations to potential clients.

23 34. Because Defendants have intentionally palmed their services off as if they
24 were Plaintiff’s, Plaintiff is entitled to treble damages under 15 U.S.C. § 1117(b).

25 35. Because Defendants’ actions are fraudulent and willful, this is an
26 “exceptional” case justifying an award of reasonable attorneys’ fees to Plaintiff under
27 15 U.S.C. § 1117(a).

28 ///

SECOND CLAIM FOR RELIEF

(For Unfair Competition Under 15 U.S.C. § 1125

Against All Defendants)

1
2
3
4 36. Plaintiff incorporates by reference paragraphs 10 through 22 and
5 24 through 35 of this complaint as though fully set forth herein.

6 37. Plaintiff owns the registered trademark “Sweet James.” Through Plaintiff’s
7 marketing efforts, the terms “James Bergener” and “Sweet James Bergener” – which are
8 variations on Plaintiff’s registered trademark – have also come to be associated with
9 Plaintiff. Plaintiff has used these terms continuously since 2012.

10 38. The terms “Sweet James,” “James Bergener,” and “Sweet James Bergener”
11 are distinctive and have acquired a secondary meaning though Plaintiff’s marketing
12 efforts.

13 39. Plaintiff used the terms “Sweet James,” “James Bergener,” and “Sweet
14 James Bergener” before Defendants.

15 40. Defendants use the terms “Sweet James,” “James Bergener,” and “Sweet
16 James Bergener” in commerce by bidding on these phrases as search terms so that
17 Defendants’ advertisements appear when potential clients search online for those terms.

18 41. When those potential clients see Defendants’ advertisements and call
19 Defendants’ law firm, Defendants further use “Sweet James” in commerce by orally and
20 fraudulently representing to those potential clients that Defendants are “part of the Sweet
21 James umbrella.”

22 42. Defendants actions are likely to confuse clients and do confuse clients
23 because a client searching for “Sweet James,” “James Bergener,” or “Sweet James
24 Bergener,” who then calls the number included in Defendants’ advertisement and is told
25 Defendants’ law firm is “part of the Sweet James umbrella,” is likely to believe
26 Defendants are affiliated with Plaintiff when they are not.

27 43. Defendants’ wrongful and deceptive actions have unjustly enriched
28 themselves at Plaintiff’s expense by diverting business to Defendants which otherwise

1 would have gone to Plaintiff. Plaintiff is, therefore, entitled to disgorgement of
2 Defendants' profits from the use of Plaintiff's registered trademark.

3 44. Defendants' actions have caused Plaintiff actual damages in an amount to
4 be proven at trial in excess of the jurisdictional minimum of the court.

5 45. Plaintiff is entitled to an injunction prohibiting Defendants' use of "Sweet
6 James," "James Bergener," and "Sweet James Bergener," including in search term
7 bidding and in oral representations to potential clients.

8 46. Because Defendants have intentionally palmed their services off as if they
9 were Plaintiff's, Plaintiff is entitled to treble damages under 15 U.S.C. § 1117(b).

10 47. Because Defendants' actions are fraudulent and willful, this is an
11 "exceptional" case justifying an award of reasonable attorneys' fees to Plaintiff under
12 15 U.S.C. § 1117(a).

13 **THIRD CLAIM FOR RELIEF**

14 **(For Trademark Misappropriation Under Cal. Bus. & Prof. Code § 14245**

15 **Against All Defendants)**

16 48. Plaintiff incorporates by reference paragraphs 10 through 22,
17 24 through 35, and 37 through 47 of this complaint as though fully set forth herein.

18 49. Plaintiff owns the registered trademark "Sweet James" and has
19 continuously used it since 2012.

20 50. The registered trademark "Sweet James" is distinctive and has acquired a
21 secondary meaning through Plaintiff's marketing efforts.

22 51. Plaintiff used the registered trademark "Sweet James" prior to Defendants'
23 use.

24 52. Defendants use Plaintiff's registered trademark in commerce by bidding on
25 "Sweet James" as a search term so that Defendants' advertisements appear when
26 potential clients search online for "Sweet James."

27 53. When those potential clients see Defendants' advertisements and call
28 Defendants' law firm, Defendants further use Plaintiff's registered trademark "Sweet

1 James” in commerce by orally and fraudulently representing to those potential clients
2 that Defendants are “part of the Sweet James umbrella.”

3 54. Defendants actions are likely to confuse clients because a client searching
4 for Plaintiff’s registered trademark “Sweet James,” who then calls the number included
5 in Defendants’ advertisement and is told Defendants’ law firm is “part of the Sweet
6 James umbrella,” is likely to believe Defendants are affiliated with Plaintiff when they
7 are not.

8 55. Defendants’ actions have unjustly enriched them at Plaintiff’s expense by
9 diverting business to Defendants which otherwise would have gone to Plaintiff. Plaintiff
10 is, therefore, entitled to disgorgement of Defendants’ profits from the use of Plaintiff’s
11 registered trademark.

12 56. Defendants’ actions have caused Plaintiff actual damages in an amount to
13 be proven at trial in excess of the jurisdictional minimum of the court.

14 57. Plaintiff is entitled to an injunction under Cal. Bus. & Prof. Code § 14250
15 prohibiting Defendants’ use of Plaintiff’s registered trademark “Sweet James,”
16 including in search term bidding and in oral representations to potential clients.

17 58. Plaintiff is entitled to treble damages under Cal. Bus. & Prof. Code § 14245.

18 59. Because Defendants’ actions are oppressive, fraudulent, and malicious,
19 Plaintiff is entitled to punitive damages.

20 **FOURTH CLAIM FOR RELIEF**

21 **(For Common Law Misappropriation Against All Defendants)**

22 60. Plaintiff incorporates by reference paragraphs 10 through 22,
23 24 through 35, 37 through 47, and 49 through 59 of this complaint as though fully set
24 forth herein.

25 61. Plaintiff has made a substantial investment of time, effort, and money into
26 creating the “Sweet James” brand and registered trademark, as well as associated terms
27 such as “James Bergener” and “Sweet James Bergener.” Through Plaintiff’s marketing
28 efforts, the terms “James Bergener” and “Sweet James Bergener” – which are variations

1 on Plaintiff's registered trademark – have also come to be associated with Plaintiff.
2 Plaintiff has used these terms continuously since 2012.

3 62. The terms "Sweet James," "James Bergener," and "Sweet James Bergener"
4 are distinctive and have acquired a secondary meaning through Plaintiff's marketing
5 efforts.

6 63. Plaintiff used the terms "Sweet James," "James Bergener," and "Sweet
7 James Bergener" before Defendants.

8 64. Defendants have misappropriated the terms "Sweet James," "James
9 Bergener," and "Sweet James Bergener" at little or no cost by bidding on these phrases
10 as search terms so that Defendants' advertisements appear when potential clients search
11 online for those terms.

12 65. When those potential clients see Defendants' advertisements and call
13 Defendants' law firm, Defendants further misappropriate the "Sweet James" trademark
14 by orally and fraudulently representing to those potential clients that Defendants are
15 "part of the Sweet James umbrella."

16 66. Defendants' actions have unjustly enriched them at Plaintiff's expense by
17 diverting business to Defendants which otherwise would have gone to Plaintiff. Plaintiff
18 is, therefore, entitled to disgorgement of Defendants' profits from the use of Plaintiff's
19 registered trademark.

20 67. Defendants' actions have caused Plaintiff actual damages in an amount to
21 be proven at trial in excess of the jurisdictional minimum of the court.

22 68. Plaintiff is entitled to injunctive relief prohibiting Defendants' use of
23 "Sweet James," "James Bergener," and "Sweet James Bergener," including in search
24 term bidding and in oral representations to potential clients.

25 69. Because Defendants' actions are oppressive, fraudulent, and malicious,
26 Plaintiff is entitled to punitive damages.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIFTH CLAIM FOR RELIEF

**(For Unfair Competition Under Cal. Bus. & Prof. Code § 17200 et seq.
Against All Defendants)**

70. Plaintiff incorporates by reference paragraphs 10 through 22, 24 through 35, 37 through 47, 49 through 59, and 61 through 69 of this complaint as though fully set forth herein.

71. Defendants’ use of the terms “Sweet James,” “James Bergener,” and “Sweet James Bergener” in search term bidding and their oral representations to potential clients that they are “part of the Sweet James umbrella” are unlawful because they violate state and federal trademark laws and prohibitions on fraud.

72. Defendants’ use of the terms “Sweet James,” “James Bergener,” and “Sweet James Bergener” in search term bidding and their oral representations to potential clients that they are “part of the Sweet James umbrella” are fraudulent because Defendants are not affiliated with Plaintiff.

73. Plaintiff has lost money as a result of Defendants’ actions.

74. Defendants’ actions have unjustly enriched them at Plaintiff’s expense by diverting business to Defendants which otherwise would have gone to Plaintiff. Plaintiff is, therefore, entitled to disgorgement of Defendants’ profits from the use of Plaintiff’s registered trademark.

75. Plaintiff is entitled to injunctive relief prohibiting Defendants’ use of “Sweet James,” “James Bergener,” and “Sweet James Bergener,” either in search term bidding or in oral representations to potential clients.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief against Defendants.

As to the First Claim for Relief:

- 1. Damages according to proof;
- 2. Disgorgement of Defendants’ profits;
- 3. Treble damages under 15 U.S.C. § 1117(b);

1 4. An injunction prohibiting Defendants’ use of Plaintiff’s registered
2 trademark “Sweet James,” including in search term bidding and in oral representations
3 to potential clients;

4 5. Plaintiff’s reasonable attorneys’ fees under 15 U.S.C. § 1117(a);

5 6. Prejudgment interest;

6 7. Costs of suit; and

7 8. Any and all relief the court may deem just and proper.

8 **As to the Second Claim for Relief:**

9 9. Damages according to proof;

10 10. Disgorgement of Defendants’ profits;

11 11. Treble damages under 15 U.S.C. § 1117(b);

12 12. An injunction prohibiting Defendants’ use of “Sweet James,” “James
13 Bergener,” and “Sweet James Bergener,” including in search term bidding and in oral
14 representations to potential clients;

15 13. Plaintiff’s reasonable attorneys’ fees under 15 U.S.C. § 1117(a);

16 14. Prejudgment interest;

17 15. Costs of suit; and

18 16. Any and all relief the court may deem just and proper.

19 **As to the Third Claim for Relief:**

20 17. Damages according to proof;

21 18. Disgorgement of Defendants’ profits;

22 19. Treble damages under Cal. Bus. & Prof. Code § 14250;

23 20. An injunction prohibiting Defendants’ use of Plaintiff’s registered
24 trademark “Sweet James,” including in search term bidding and in oral representations
25 to potential clients;

26 21. Punitive damages according to proof;

27 22. Prejudgment interest;

28 23. Costs of suit; and

1 24. Any and all relief the court may deem just and proper.

2 **As to the Fourth Claim for Relief:**

3 25. Damages according to proof;

4 26. Disgorgement of Defendants’ profits;

5 27. An injunction prohibiting Defendants’ use of “Sweet James,” “James
6 Bergener,” and “Sweet James Bergener,” including in search term bidding and in oral
7 representations to potential clients;

8 28. Punitive damages according to proof;

9 29. Prejudgment interest;

10 30. Costs of suit; and

11 31. Any and all relief the court may deem just and proper.

12 **As to the Fifth Claim for Relief:**

13 32. Disgorgement of Defendants’ profits;

14 33. A constructive trust on Defendants’ profits from the use of “Sweet James,”
15 “James Bergener,” and “Sweet James Bergener”;

16 34. An injunction prohibiting Defendants’ use of “Sweet James,” “James
17 Bergener,” and “Sweet James Bergener,” including in search term bidding and in oral
18 representations to potential clients;

19 35. Prejudgment interest;

20 36. Costs of suit; and

21 37. Any and all relief the court may deem just and proper.

22 Respectfully submitted,

23 KLEIN & WILSON

24
25 Dated: April 24, 2020

26 By: /s/ Gerald A. Klein
27 Gerald A. Klein, P.C.
28 Attorneys for Plaintiff Sweet James LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff Sweet James LLP demands a jury trial in this case pursuant to Fed. R. Civ. P. 38(a).

Respectfully submitted,
KLEIN & WILSON

Dated: April 24, 2020

By: /s/ Gerald A. Klein
Gerald A. Klein, P.C.
Attorneys for Plaintiff Sweet James LLP