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IN THE UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF CALIFORNIA

COURT OF MASTER SOMMELIERS,
AMERICAS, a California nonprofit mutual
benefit corporation,

Plaintiff,

v.

DANIEL PILKEY, an individual,

Defendant.

Case No. 19-3620

COMPLAINT

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1 Plaintiff Court of Master Sommeliers, Americas brings this action against Defendant
2 Daniel Pilkey, alleging as follows:

3
4 **NATURE OF THE CASE**

5 1. The Court of Master Sommeliers, Americas (“CMS”) is a nonprofit organization
6 dedicated to setting the global standard of excellence for beverage service within the hospitality
7 industry. CMS is recognized worldwide as setting the high bar by which fine wine and beverage
8 service is measured.

9 2. CMS provides four levels of certification for sommeliers, culminating at the
10 highest level with the “Master Sommelier” diploma and title, commonly abbreviated “MS.”
11 Candidates who pass CMS’s rigorous examination requirements are certified by CMS to use the
12 title “Master Sommelier,” the initials “MS,” and the Master Sommelier pin (collectively, the
13 “Certification Marks”) to signify their achievement of this significant milestone.

14 3. Since November 13, 2018, Daniel Pilkey has wrongfully used the Certification
15 Marks to represent that he is a Master Sommelier without meeting CMS’s certification
16 requirements. CMS now seeks, in this lawsuit, to maintain the integrity of the Master Sommelier
17 title and restrain Mr. Pilkey from his continued use of the Certification Marks.

18 **JURISDICTION AND VENUE**

19 4. This Court has jurisdiction over the claims asserted herein pursuant to 15 U.S.C.
20 § 1121(a) and 28 U.S.C. § 1338(a) because the claims arise under acts of Congress relating to
21 trademarks.

22 5. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) because
23 Mr. Pilkey regularly and systematically conducts business within this District, through, among
24 other things, his employment by a winery based in this District and his use of the Certification
25 Marks to promote himself on social media websites directed at residents of this District; because
26 confusion about Mr. Pilkey’s use of the Certification Marks is likely to occur in this District,
27 which hosts several of the world’s premier wine regions and the center of the American wine
28 industry; because a significant number of the Master Sommeliers whose certifications are diluted

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1 by Mr. Pilkey’s wrongful conduct live or work in this District, or regularly visit this District for
2 activities related to fine wine or hospitality services; and because Mr. Pilkey knew or should
3 have known that his conduct, as alleged herein, would cause damage and irreparable harm to
4 CMS in this District.

5 **THE PARTIES**

6 6. Plaintiff Court of Master Sommeliers, Americas is a California nonprofit mutual
7 benefit corporation with its principal place of business in Napa County, California. Pursuant to
8 its Bylaws, CMS is governed by its Board of Directors, which is responsible for managing the
9 activities and affairs of CMS and exercising all powers of CMS.

10 7. CMS is informed and believes that Defendant Daniel Pilkey is an Illinois resident
11 who is employed by a winery based in Sonoma County, California.

12 **FACTUAL ALLEGATIONS**

13 **Master Sommelier Diploma**

14 8. CMS was established to encourage improved standards of beverage knowledge
15 and service in hotels and restaurants. The “Master Sommelier” (or “MS”) diploma represents the
16 pinnacle of CMS’s sommelier certification program and certifies that its bearer has met the
17 highest standards of knowledge, service, and expertise for fine wine and beverage service in the
18 hospitality industry.

19 9. To qualify to sit for the Master Sommelier Diploma Examination, a candidate
20 must first pass three other sommelier certification levels administered by CMS. Candidates
21 devote years of study and training to simply qualify for an invitation to take the Master
22 Sommelier examination, and the pass rate for the MS exam is breathtakingly low—averaging
23 around four percent in the Americas chapter and fewer than ten successful candidates per year,
24 based on the last three years for which CMS has uncompromised data (2015 to 2017). Since
25 CMS’s inception, only 165 individuals in the Americas chapter have achieved this prestigious
26 rank.


27 10. The Master Sommelier Diploma Examination is administered in three portions:
28 theory, practical (service), and tasting. Candidates must achieve a 75% passing score on each

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1 portion of the examination within a three-year period in order to certify as a Master Sommelier.
 2 Candidates can take a single portion or multiple portions of the examination in each sitting, and
 3 passing scores for individual portions of the exam are retained during the three-year period.

4 11. Candidates who have been awarded the Master Sommelier Diploma are qualified
 5 to become members of CMS. Under California Corporations Code § 7210 and CMS’s Bylaws,
 6 the CMS Board of Directors is responsible for managing the membership of CMS, including
 7 administering the Master Sommelier Diploma Examination; approving eligible and qualified
 8 persons for CMS membership; and terminating or suspending CMS members.

9 12. As the organization bearing the privilege of certifying Master Sommeliers, CMS
 10 is the owner of the federal certification mark which signifies achievement of the Master
 11 Sommelier certification, and additional service marks, including:

MARK	REGISTRATION NUMBER	REGISTRATION DATE
MASTER SOMMELIER	4,473,561	January 28, 2014
	2,384,665	September 12, 2000

19 13. CMS’s federal registration for the Master Sommelier Mark explains, “[t]he
 20 certification mark, as used by persons authorized by the certifier, certifies that the services
 21 provided have been performed by individuals having completed the educational programs or
 22 courses, and passed an examination as determined by the certifier’s objective metrics for
 23 sommelier pairings.” A copy of CMS’s federal registration for the Master Sommelier Mark is
 24 attached hereto as **Exhibit A**.

25 14. Additionally, the mark bearing a profile and the words “MASTER
 26 SOMMELIER” (“Master Sommelier Image Mark”) appears on the Master Sommelier pin which
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1 is given to each Master Sommelier. A copy of CMS's federal registration for the Master
2 Sommelier Image Mark is attached hereto as **Exhibit B**.

3 15. Further, the initials "MS" (or "M.S.") when used in the hospitality industry or in
4 the context of fine wine and beverages are widely understood to signify that the bearer of the
5 initials has passed the Master Sommelier certification process. For instance, in a 2012 interview
6 with a Master Sommelier, Los Angeles Magazine repeatedly uses the initials "MS" to refer to the
7 "Master Sommelier" certification.¹ Additionally, the San Francisco Chronicle has explained that
8 candidates who pass the Master Sommelier examination "earn[] the right to add the coveted
9 'MS' suffix to their names."²

10 16. The difficulty, mastery, and prestige associated with the Master Sommelier title
11 has been widely publicized in popular media, such as the 2013 documentary "SOMM" and the
12 2016 television series "Uncorked." For instance, the Internet Movie Database provides the
13 following summary for "SOMM": "Four sommeliers attempt to pass the prestigious Master
14 Sommelier exam, a test with one of the lowest pass rates in the world."³ And Amazon.com
15 provides the following summary for "Uncorked": "Witness the journey to attain the wine
16 world's highest honor by following six wine experts who will do whatever it takes to pass the
17 world's toughest test and win the coveted title of Master Sommelier."⁴

18 17. CMS takes seriously its role as the certification body for Master Sommeliers, and
19 it is fundamental to CMS's mission that the reputation of the Master Sommelier title be
20 protected.

21 **September 2018 Master Sommelier Diploma Examination**

22 18. On or about September 3-5, 2018, CMS offered the practical (service) and tasting
23 portions of the Master Sommelier Diploma Examination. Over 100 candidates took one or both
24 portions of the exam.

25 _____
26 ¹ Caroline Pardilla, *Spago's Christopher Miller on Being a Master Sommeleir*, L.A. Magazine (Nov. 8, 2012),
<https://www.lamag.com/digestblog/spagos-christopher-miller-on-being-a-master-sommelier/>.

27 ² Esther Mobley, *Somm scandal: Revelations of cheating at master sommelier examination lead to the invalidation
of 23 new certificates*, S.F. Chronicle (Oct. 9, 2018), [https://www.sfchronicle.com/wine/article/Somm-scandal-
Revelations-of-cheating-at-master-13294233.php](https://www.sfchronicle.com/wine/article/Somm-scandal-Revelations-of-cheating-at-master-13294233.php).

28 ³ *Somm* (2012), <https://www.imdb.com/title/tt2204371/> (last visited June 14, 2019).

⁴ *Uncorked* (2015), <https://www.amazon.com/Uncorked-Season-1/dp/B0176NWM5E> (last visited June 14, 2019).

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1 19. At the conclusion of the exam, CMS announced that a record number of
2 candidates had passed the Master Sommelier examination based on their September 2018 results.
3 The 24 candidates who passed were each inducted into CMS and given a Master Sommelier pin.

4 20. Mr. Pilkey was one of the 24 candidates who passed the September 2018 Master
5 Sommelier examination. On or about September 5, 2018, he was inducted into the membership
6 of CMS and given a Master Sommelier pin.

7 21. After the examination and induction ceremony, CMS learned that a CMS member
8 improperly disclosed confidential information about the tasting portion of the September 2018
9 Master Sommelier examination to an unknown number of candidates, thereby compromising the
10 exam results. CMS conducted an investigation of the improper disclosure. Based on the results
11 of that investigation, the CMS Board of Directors made the difficult decision to invalidate the
12 tasting portion of the September 2018 examination in order to preserve the integrity of the
13 Master Sommelier title and CMS's examination process.

14 22. Due to the invalidation of the September 2018 tasting portion, 23 of the 24
15 candidates who were inducted in September 2018 no longer met the certification requirements
16 for Master Sommelier. (The 24th candidate had passed the tasting portion at an earlier sitting of
17 the exam.)

18 23. Mr. Pilkey was one of the 23 candidates who no longer met the certification
19 requirements, following the invalidation of the September 2018 tasting portion of the Master
20 Sommelier examination.

21 24. On or about October 12, 2018, CMS sent, through outside counsel, a letter to Mr.
22 Pilkey and all other affected candidates informing them of CMS's decision to invalidate the
23 September 2018 tasting portion. CMS explained that the invalidation would affect their status as
24 Master Sommeliers and their membership in CMS. CMS explained that it proposed to suspend
25 the affected candidates' membership effective November 13, 2018, and that reinstatement would
26 be conditioned on the candidate's successful passage of an uncompromised tasting portion of the
27 Master Sommelier examination at one of three sittings in 2018 or 2019. CMS further explained
28 that, pursuant to CMS's Bylaws and procedural requirements under California corporate law, the

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1 affected candidates would have an opportunity to be heard by the CMS Board of Directors on
2 November 4 or November 5, prior to the Board’s final decision on the suspension.

3 25. In its October 12, 2018 letter, CMS made clear that “[o]nce the suspension of
4 your membership is effective on November 13, your status within the Court will revert to Master
5 candidate. You will not be able to use the Master Sommelier title, to which the Court owns all
6 rights, or wear the Master Sommelier pin while you are a Master candidate.” A copy of the
7 October 12, 2018 letter which CMS sent to Mr. Pilkey is attached hereto as **Exhibit C**.

8 26. On or about October 23, 2018, CMS sent, through outside counsel, another letter
9 to Mr. Pilkey and the other affected candidates reminding them that they were invited to be heard
10 before the CMS Board of Directors, and setting out the conditions of that hearing. A copy of the
11 October 23, 2018 letter which CMS sent to Mr. Pilkey is attached hereto as **Exhibit D**.

12 27. At the CMS board hearing, Mr. Pilkey was determined to no longer meet the
13 requirements for Master Sommelier. On or about November 13, 2018, CMS suspended Mr.
14 Pilkey’s membership and revoked Mr. Pilkey’s right to use the Certification Marks.

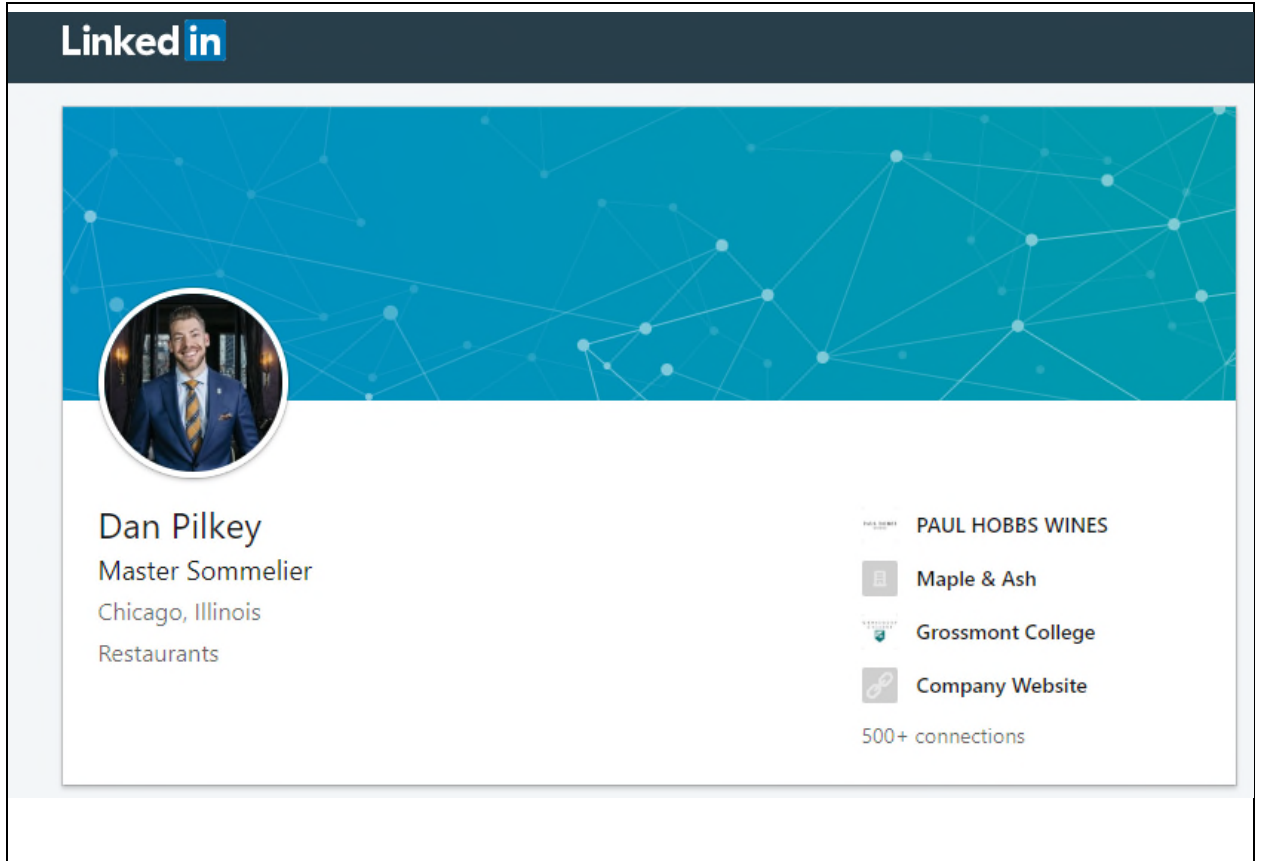
15 **Mr. Pilkey’s Wrongful Use of the Certification Marks**

16 28. CMS allowed Mr. Pilkey, along with nearly all of the other candidates affected by
17 the compromise of the September 2018 exam, to choose one opportunity to retake the tasting
18 portion of the Master Sommelier in December 2018, April 2019, or September 2019. Mr. Pilkey
19 chose to retake the tasting portion in December 2018, but he did not pass. He has not passed the
20 tasting portion of the Master Sommelier examination since his suspension. Accordingly, Mr.
21 Pilkey has not met the requirements to be certified as a Master Sommelier and to be reinstated as
22 a member of CMS, and CMS has not authorized him to use the Certification Marks.

23 29. Nonetheless, Mr. Pilkey continues to use the Certification Marks to wrongfully
24 represent that he has met the Master Sommelier requirements on his social media accounts.

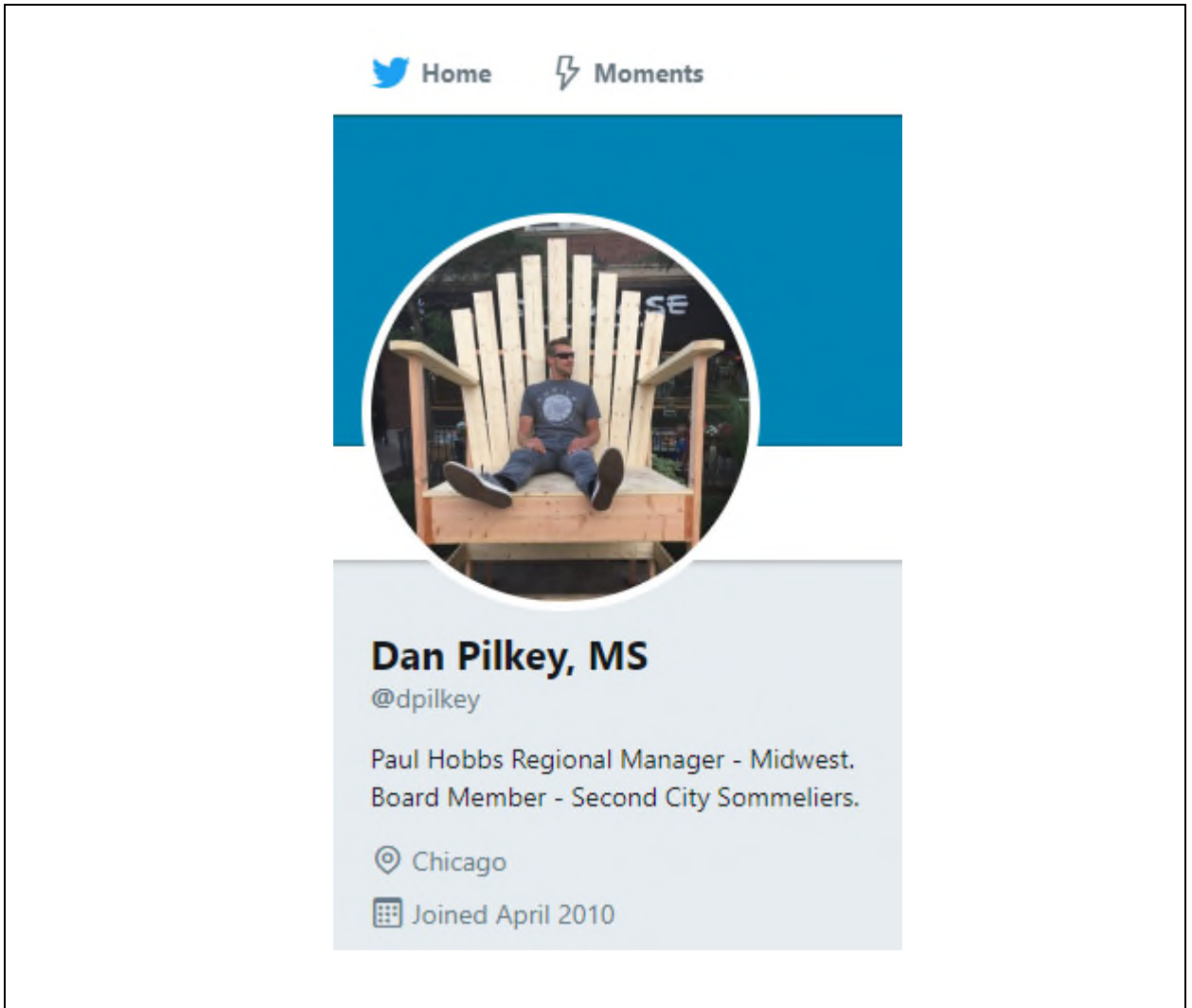
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1 30. For instance, Mr. Pilkey uses the title “Master Sommelier” on his professional
2 LinkedIn profile at <https://www.linkedin.com/in/dan-pilkey-87322617>, as shown in the screen
3 capture below:
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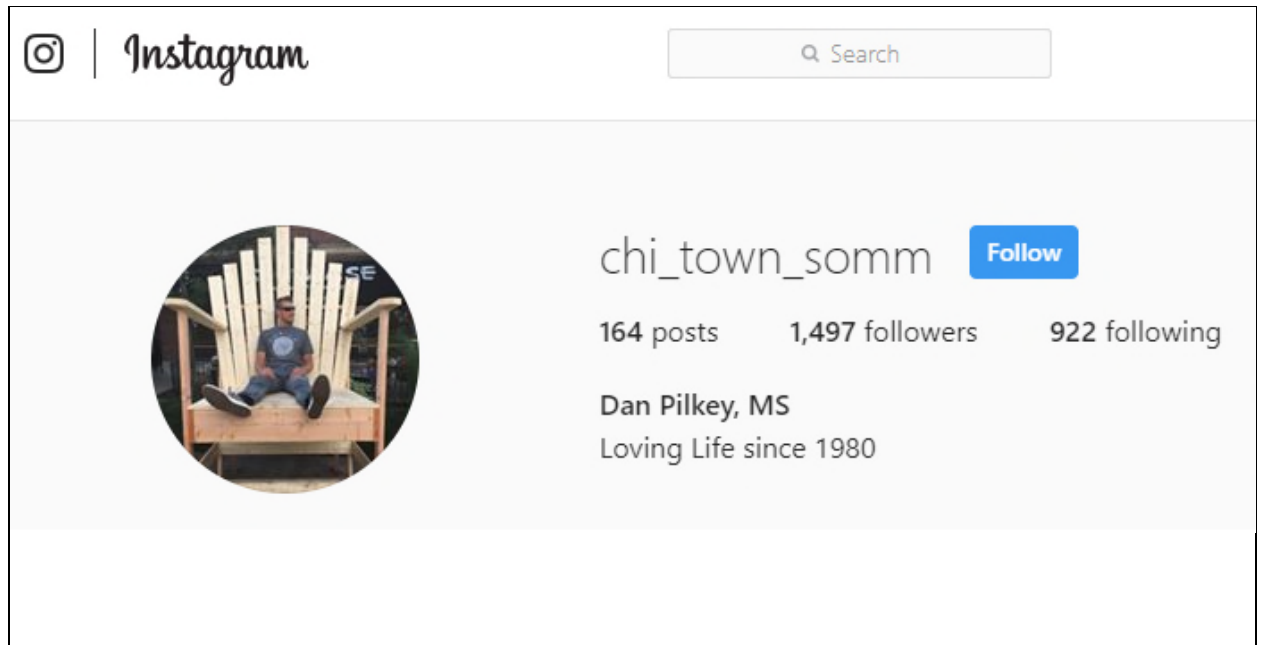
1 31. Additionally, Mr. Pilkey identifies himself as “Dan Pilkey, MS” on his Twitter
2 account at <https://twitter.com/dpilkey?lang=en>, as shown in the screen capture below:



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32. Further, Mr. Pilkey identifies himself as “Dan Pilkey, MS” on his Instagram account at https://www.instagram.com/chi_town_somm/, as shown in the screen capture below:



33. Mr. Pilkey uses his social media accounts to discuss and promote fine wines and other beverages, and to discuss the hospitality industry. Further, Mr. Pilkey openly states his affiliation with the hospitality and wine industries and his status as a wine professional, making clear that his use of “MS” is intended to refer to the “Master Sommelier” certification.

34. This link is further reinforced through social media interactions between Mr. Pilkey and other users. For instance, on March 4, 2019, twitter user @EmlynDThomas posted a tweet linking to Mr. Pilkey’s twitter account which said: “Amazing opportunity to watch a true master at work as @dpilkey demonstrated the finer points of table-side service required for The Court of Master Sommeliers service practical at the Second City Sommeliers Bootcamp 2019.”⁵

35. Around the same time, LinkedIn user “Emlyn D. Thomas, FMP, CFBE” wrote a post on LinkedIn linking to Mr. Pilkey’s LinkedIn account which said: “Amazing opportunity to watch a true master at work as Dan Pilkey demonstrated the finer points of table-side service

⁵ Emlyn D. Thomas (@EmlynDThomas), Twitter (Mar. 4, 2019, 4:58 AM), <https://twitter.com/EmlynDThomas/status/1102553792522919936>.

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1 required for The Court of Master Sommeliers service practical at the Second City Sommeliers
2 Bootcamp 2019.”⁶

3 36. CMS is informed and believes that Mr. Pilkey still possesses a Master Sommelier
4 pin bearing the Master Sommelier Image Mark.

5 37. On March 6, 2019, the Chair of CMS spoke with Mr. Pilkey and requested that
6 Mr. Pilkey discontinue use of the Master Sommelier title or the “MS” initials on his social media
7 accounts. Mr. Pilkey refused to discontinue his use of the Certification Marks.

8 38. On March 20, 2019, CMS, through counsel, sent a letter to Mr. Pilkey demanding
9 that he immediately cease and desist all unauthorized use of CMS’s registered marks.
10 Nonetheless, Mr. Pilkey continues to use the Certification Marks without CMS’s authorization.

11 **FIRST CLAIM FOR RELIEF**

12 **(Trademark Infringement)**

13 39. CMS realleges and incorporates by reference the allegations of paragraphs 1
14 through 38, inclusive.

15 40. Continuously since 1987, CMS has used the Certification Marks in interstate
16 commerce in connection with the certification for Master Sommelier, including the Master
17 Sommelier Mark, the Master Sommelier Image Mark, and the initials “MS.”

18 41. CMS has expended, and continues to expend, a significant amount of time and
19 money to develop, administer, and promote the Master Sommelier certification program through
20 its distinctive marks. As a result, the Certification Marks have been and are recognized by the
21 public as certifying that the individual bearing the Certification Marks is among the most
22 qualified in the hospitality industry, with outstanding tasting and evaluation skills, wine
23 knowledge, and outstanding abilities in service and beverage department management.

24 42. In order to uphold the reputation and standards signified by the “Master
25 Sommelier” title and the Certification Marks, CMS made the difficult decision to invalidate the
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28 ⁶ Emlyn D. Thomas, LinkedIn, <https://www.linkedin.com/feed/update/urn:li:activity:6508319419087802369> (last visited June 14, 2019).

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1 September 2018 tasting portion of the Master Sommelier Diploma Examination when CMS
2 learned that the test had been compromised.

3 43. Due to the invalidation of the September 2018 tasting portion, Mr. Pilkey no
4 longer met the requirements for Master Sommelier certification. His membership in CMS was
5 suspended effective November 13, 2018 after he was provided notice and an opportunity for a
6 hearing before CMS, and his right to use the Certification Marks was revoked.

7 44. Despite retaking the tasting portion of the Master Sommelier examination in
8 December 2018, Mr. Pilkey has not passed the tasting portion since his suspension. Therefore,
9 Mr. Pilkey has not established that he satisfies the certification requirements for Master
10 Sommelier. Nor has Mr. Pilkey been reinstated as a member of CMS.

11 45. CMS is informed and believes that since November 13, 2018, Mr. Pilkey
12 continues to use the Certification Marks on his social media accounts without meeting the
13 requirements for Master Sommelier certification and without CMS's authorization.

14 46. Through Mr. Pilkey's aforesaid use of the Certification Marks, Mr. Pilkey has
15 unlawfully misappropriated and infringed upon CMS's marks in violation of the Lanham
16 Trademark Act, 15 U.S.C. § 1051 *et seq.*

17 47. As a direct and proximate result of Mr. Pilkey's conduct, CMS has suffered, and
18 will continue to suffer, severe, immediate, and irreparable injury to its business, goodwill, and
19 reputation. Unless such acts are restrained by this Court, they will be continued, and CMS will
20 continue to suffer great and irreparable injury.

21 48. CMS has no adequate remedy at law.

22 49. This is an exceptional case and CMS is therefore entitled to recover reasonable
23 attorneys' fees pursuant to 15 U.S.C. § 1117.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, CMS prays for judgment as follows:

26 1. For a preliminary and permanent injunction, enjoying and restraining Mr. Pilkey
27 and all persons acting in concert with him from misappropriating and infringing upon the
28 Certification Marks;

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- 1 2. For reasonable attorneys' fees and costs under 15 U.S.C. § 1117;
- 2 3. For the costs of suit herein; and
- 3 4. For such other and further relief as the Court deems just and proper.

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DATED: June 21, 2019

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

By: /s/Jennifer L. Brockett
Jennifer L. Brockett

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