

FILED  
MAY 19 PM 2:11  
RICHARD W. BAKER  
CLERK OF COURT  
U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Katherine M. Basile, Esq. (Bar No. 132518)  
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Attorneys for Plaintiff  
RIDE THE DUCKS INTERNATIONAL, LLC

ORIGINAL

BZ

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CV 09

2195

RIDE THE DUCKS INTERNATIONAL, LLC,

Case No.

Plaintiff,

COMPLAINT FOR TRADEMARK  
INFRINGEMENT AND UNFAIR  
COMPETITION (INJUNCTIVE RELIEF  
SOUGHT)

vs.

BAY QUACKERS, LLC,

DEMAND FOR JURY TRIAL

Defendant.

Plaintiff, Ride The Ducks International, LLC, a Missouri Limited Liability Company, and for  
its Complaint against Defendant Bay Quackers, LLC, states and alleges as follows:

**FACTUAL ALLEGATIONS**

***The Parties***

1. Plaintiff, Ride The Ducks International, LLC ("Ride The Ducks" or "Plaintiff") is and  
at all times material hereto has been a Missouri Limited Liability Company with its principal place of  
business at 5445 Triangle Parkway, Norcross, Georgia 30092.

HOWREY LLP

COMPLAINT FOR TRADEMARK INFRINGEMENT  
AND UNFAIR COMPETITION



3. This Court has original federal question jurisdiction and supplemental jurisdiction over this action under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338 & 1367(a), as this case arises under the trademark laws of the United States, 15 U.S.C. §§ 1051 *et seq.*

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the Defendant is doing business and can be found in this District, and because a substantial part of the events giving rise to the claim occurred in this District.

5. Ride The Ducks owns U.S. Trademark Registration No. 2,484,276 for a service mark comprised of a sound consisting of a quacking noise made by tour guides and tour participants by use of duck call devices throughout various portions of guided amphibious vehicle tours (“Ride The Ducks’ registered sound mark”). Ride The Ducks’ use of its registered sound mark in connection with guided tours over land and water by amphibious vehicles dates back to as early as 1996. The United States Patent and Trademark Office issued U.S. Trademark Registration No. 2,484,276 on September 4, 2001. This registration is valid, subsisting, and incontestable pursuant to 15 U.S.C. § 1065. A copy of this registration is attached hereto as Exhibit A.

6. Ride The Ducks brings this action to stop Bay Quackers from the unauthorized and infringing use of Ride The Ducks' registered sound mark. Bay Quackers' use of Ride The Ducks' registered sound mark is likely to cause confusion, mistake or to deceive the public as to the source of the Bay Quackers' goods and services, and as to the existence of a connection, affiliation or sponsorship between Bay Quackers and Ride The Ducks, when no such connection or affiliation exists.

7. This action seeks permanent injunctive relief, monetary relief, and attorneys' fees based on Defendant's violation of: (1) § 32 of the Lanham Trademark Act of 1946, as amended (the "Lanham Act"), 15 U.S.C. § 1114 (federal trademark infringement); (2) § 43 of the Lanham Act, 15



1 U.S.C. §1125(a) (federal unfair competition and false designation of origin) and (3) Cal. Bus. & Prof.  
2 Code § 17200, et seq. (California Unfair Competition).

3 8. Ride The Ducks owns a number of federal trademark registrations associated with its  
4 guided amphibious tours, including but not limited to the following:

5 a. **Sound mark consisting of a quacking noise made by tour guides and tour**  
6 **participants by use of duck call devices throughout various portions of the tours,**  
7 Fed. Reg. No. 2,484,276 for "tour guide services over land and water by amphibious  
8 vehicles." International Class 39, first use anywhere at least as early as August 22, 1996  
9 and use in commerce at least as early as August 22, 1996. See Exhibit A.

10 b. **WACKY QUACKERS**, Fed. Reg. No. 2,167,682 for "duck calls and toy noise  
11 makers." International Class 28, first use anywhere at least as early as March 1, 1997  
12 and use in commerce at least as early as March 1, 1997. A copy of this registration is  
13 attached hereto as Exhibit B.

14 9. At all times material hereto, Ride The Ducks' federal registrations have been, and  
15 continue to be, valid and subsisting.

16 10. Ride The Ducks began using its registered sound mark over a decade ago. Since that  
17 time, Ride The Ducks has continuously and extensively used its registered sound mark in several  
18 different cities across the United States in connection with its tour guide services. Moreover, Ride The  
19 Ducks' right to use its registered sound mark is incontestable pursuant to 15 U.S.C. § 1065. A copy of  
20 the Notice of Acceptance of Section 8 Declaration of Continued Use and Notice of Acknowledgement  
21 of Section 15 Declaration of Incontestability is attached hereto as Exhibit C.

22 11. Ride The Ducks' registered marks are recognized by consumers as representing Ride  
23 The Ducks' high-quality tour guide services.

24 12. Ride The Ducks operates guided amphibious sightseeing tours in several cities,  
25 including Baltimore, Maryland; Branson, Missouri; Philadelphia, Pennsylvania; Seattle, Washington;  
26 Newport, Kentucky; Stone Mountain Park, Georgia and San Francisco, California.



1           13.     Ride The Ducks first began offering guided amphibious sightseeing tours in Branson,  
2 Missouri in 1977. Since that time, Ride The Ducks' fleet of amphibious tour vehicles has grown to  
3 over seventy-five (75) vehicles.

4           14.     Ride The Ducks is the nation's largest amphibious tour operator and amphibious vehicle  
5 manufacturer. Over one million (1,000,000) guests enjoy Ride The Ducks tours each year.

6           15.     Ride The Ducks amphibious tours provide sightseers an experience that combines fun  
7 and music with history and sights.

8           16.     To foster participation by its customers, Ride The Ducks distributes a duck call device,  
9 known as a "Wacky Quacker," to its patrons for use while aboard the amphibious vehicle. The  
10 customers use the Wacky Quacker devices during the course of the tour to quack at one another, the  
11 tour personnel and random passers-by. Ride the Ducks tour guides, likewise, use the "Wacky  
12 Quacker" duck calls to encourage participation of the tour patrons.

13          17.     Ride The Ducks' longstanding use of the Wacky Quacker devices for its amphibious  
14 tours have caused customers and prospective customers to recognize and associate Ride The Ducks'  
15 registered sound mark with the amphibious tour services provided by Ride The Ducks.

16          18.     Upon information and belief, in November 2005, Bay Quackers began operating an  
17 amphibious tour in San Francisco.

18          19.     Like Ride The Ducks' amphibious tours, Bay Quackers' tour takes customers on a tour  
19 in an amphibious vehicle across land and water.

20          20.     Like Ride The Ducks' amphibious tour in San Francisco, Bay Quackers' tour takes  
21 customers on a tour in an amphibious vehicle through historic San Francisco streets and across the  
22 waters of San Francisco Bay.

23          21.     Like Ride the Ducks' amphibious tours, including its San Francisco amphibious tour,  
24 part of Bay Quackers' tour also includes distributing duck call devices to its patrons for use while  
25 aboard the amphibious vehicle. The sounds emanating from Bay Quackers' duck call devices are  
26 similar to, if not identical to, the sounds made by Ride the Ducks' Wacky Quacker devices and Ride  
27 The Ducks' registered sound mark.

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1           22.     Bay Quackers' use of Ride The Ducks' registered sound mark has caused actual  
2 confusion.

3           23.     Upon information and belief, Bay Quackers had prior knowledge of Ride The Ducks'  
4 use of its Wacky Quacker devices and its registered sound mark before Bay Quackers' first use of duck  
5 call devices for its amphibious tours in San Francisco.

6           24.     By letters dated February 7, 2008, May 16, 2008, December 2, 2008 and April 20, 2009,  
7 Ride The Ducks notified Bay Quackers that it objected to Bay Quackers' use of Ride The Ducks'  
8 registered sound mark and demanded that Bay Quackers immediately cease and desist from all use of  
9 Ride The Ducks' registered sound mark. Copies of these cease and desist letters are attached hereto as  
10 Exhibit D.

11          25.     Bay Quackers refused to comply with Ride The Ducks' repeated cease and desist  
12 demands and continues to willfully and unlawfully infringe Ride The Ducks' registered sound mark.

13          26.     Bay Quackers' use of Ride The Ducks' registered sound mark, or a sound mark that is  
14 similar thereto, is intentional and likely to cause confusion with Ride The Ducks' customers and  
15 potential customers. Further, the goods and services offered by Bay Quackers are closely related, if  
16 not identical, to the goods and services Ride The Ducks sells and offers under its registered sound  
17 mark.

18          27.     Bay Quackers' use of Ride The Ducks' registered sound mark, or a sound mark that is  
19 similar thereto, is likely to cause confusion or mistake or deceive the public into believing that Bay  
20 Quackers is affiliated with, connected to or associated with Ride The Ducks.

21          28.     Bay Quackers' use of Ride The Ducks' registered sound mark, or a sound mark that is  
22 similar thereto, is likely to cause confusion or mistake or to deceive the public as to the origin,  
23 sponsorship or approval of Bay Quackers' goods, services or commercial activities by Ride The  
24 Ducks.

25          29.     Unless enjoined, Bay Quackers will continue to willfully infringe and violate Ride The  
26 Ducks' rights in its registered sound mark, which will irreparably harm Ride The Ducks and cause  
27 Ride The Ducks to suffer damage, including but not limited to, damage to its goodwill and business  
28 reputation.



**COUNT I**  
**TRADEMARK INFRINGEMENT**  
**(15 U.S.C. § 1114)**

30. Ride The Ducks realleges and incorporates by reference paragraphs 1-29 of the Complaint.

31. Bay Quackers have used Ride The Ducks' registered sound mark, or a sound mark that is similar thereto, in connection with the sale, offering for sale or advertising of goods and services.

32. Bay Quackers' use of Ride The Ducks' registered sound mark, or a sound mark that is similar thereto, is likely to cause confusion, mistake or deceive an appreciable number of ordinary buyers as to the source of or association of those goods and services with Ride The Ducks.

33. On information and belief Bay Quackers' conduct is willful.

34. Bay Quackers' conduct constitutes trademark infringement in violation of § 32 of the Lanham Act, 15 U.S.C. § 1114.

35. By reason of the foregoing acts of Bay Quackers, Ride The Ducks has sustained, and unless enjoined will continue to sustain, substantial injury and damage.

36. Bay Quackers' acts have caused Ride The Ducks irreparable harm and, unless enjoined, will continue to cause Ride The Ducks continuing irreparable harm.

37. This harm constitutes an injury for which Ride The Ducks has no adequate remedy at law.

**COUNT II**  
**UNFAIR COMPETITION/FALSE DESIGNATION OF ORIGIN**  
**(15 U.S.C. § 1125(A))**

38. Ride The Ducks realleges and incorporates by reference paragraphs 1-37 of the Complaint.

39. Bay Quackers' unauthorized use of Ride The Ducks' sound mark, or a sound mark that is similar thereto, for both related and/or identical goods and/or services (e.g., amphibious tours and goods and services related thereto) falsely suggests that its products and services are connected with, sponsored by, affiliated with, or related to Ride The Ducks.

40. Bay Quackers continues to use Ride The Ducks' sound mark, or a sound mark that is at least confusingly similar thereto, in connection with their goods and services.







1 advertising (including signage and on the Internet) or promotions or otherwise in conjunction with its  
2 amphibious tours;

3 (2) expressly or impliedly representing themselves to customers, potential  
4 customers, suppliers, potential suppliers or the public to be affiliated in any way with Ride The Ducks;

5 (3) representing by words or conduct that any product or service provided,  
6 offered for sale, sold, advertised, or rendered by Bay Quackers is supplied, authorized, sponsored, or  
7 endorsed by or otherwise connected with Ride The Ducks;

8 (4) otherwise infringing Ride The Ducks' registered sound mark; or

9 (5) competing unfairly with Ride The Ducks in any manner by improperly  
10 using Ride The Ducks' registered sound mark, or any mark that is likely to cause confusion with Ride  
11 The Ducks' marks;

12 B. Ordering Bay Quackers to deliver up for destruction all noise makers or other  
13 implements that produce sounds that are identical or similar to Ride The Ducks' registered sound  
14 mark;

15 C. Ordering Bay Quackers to file with this Court and serve on Ride The Ducks within  
16 thirty (30) days from the date of entry of any restraining order and/or injunction, a report in writing,  
17 under oath, setting forth in detail the manner and form in which Bay Quackers have complied with the  
18 terms of the injunction;

19 D. Ordering Bay Quackers to pay Ride The Ducks:

20 (1) all profits, gains and advantages obtained from Bay Quackers' unlawful  
21 conduct, including lost profits and corrective advertising damages in an amount to be determined at  
22 trial;

23 (2) all monetary damages sustained and to be sustained by Ride The Ducks  
24 as a consequence of Bay Quackers' unlawful conduct, including lost profits, in an amount to be  
25 determined at trial; and

26 (3) Ride The Ducks' costs and disbursements of this action, including  
27 reasonable attorneys' fees.

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1 E. Finding Bay Quackers' actions to have been willful, and therefore order that Bay  
2 Quackers' profits or Ride The Ducks' damages (whichever is greater) be trebled as provided under  
3 15 U.S.C. § 1117(b).

4 F. Awarding interest on the above damages awards;

5 G. Assessing court costs against Bay Quackers; and

6 H. Awarding such other relief as this Court may deem just and proper.

7  
8 Dated: May 19, 2009

9 Respectfully submitted,  
10 HOWREY LLP

11 By:



Katherine M. Basile

James F. Valentine

James R. Cady

Attorneys for Plaintiff

14 RIDE THE DUCKS INTERNATIONAL, INC.



**JURY DEMAND**

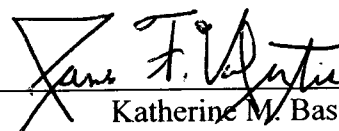
Pursuant to Federal Rule of Civil Procedure 38(b), Ride The Ducks demands a trial by jury.

Dated: May 19, 2009

Respectfully submitted,

HOWREY LLP

By:



Katherine M. Basile

James F. Valentine

James R. Cady

Attorneys for Plaintiff

RIDE THE DUCKS INTERNATIONAL, INC.

HOWREY LLP



**Int. Cl.: 39**

**Prior U.S. Cls.: 100 and 105**

**United States Patent and Trademark Office**

**Reg. No. 2,484,276**

**Registered Sep. 4, 2001**

**SERVICE MARK  
PRINCIPAL REGISTER**

**NO DRAWING-SENSORY MARK**

OZARKS SCENIC TOURS, INC. (MISSOURI CORPORATION)  
HIGHWAY 76, P.O. BOX 1837  
BRANSON, MO 65626

FOR: TOUR GUIDE SERVICES OVER LAND AND  
WATER BY AMPHIBIOUS VEHICLES, IN CLASS 39  
(U.S. CLS. 100 AND 105).

FIRST USE 8-22-1996; IN COMMERCE 8-22-1996.

THE MARK CONSISTS OF A QUACKING NOISE  
MADE BY TOUR GUIDES AND TOUR PARTICIPANTS  
BY USE OF DUCK CALL DEVICES THROUGHOUT  
VARIOUS PORTIONS OF THE TOURS".

SER. NO. 75-686,528, FILED 4-14-1999.

NORA BUCHANAN WILL, EXAMINING ATTORNEY



**Int. Cl.: 28**

**Prior U.S. Cls.: 22, 23, 38 and 50**

**Reg. No. 2,167,682**

**United States Patent and Trademark Office**

**Registered June 23, 1998**

**TRADEMARK  
PRINCIPAL REGISTER**

**WACKY QUACKERS**

**OZARKS SCENIC TOURS, INC. (MISSOURI  
CORPORATION)  
P.O. BOX 1068  
BRANSON, MO 65616**

**FIRST USE 3-1-1997; IN COMMERCE  
3-1-1997.**

**SER. NO. 75-319,817, FILED 7-7-1997.**

**FOR: DUCK CALLS AND TOY NOISE  
MAKERS, IN CLASS 28 (U.S. CLS. 22, 23, 38  
AND 50).**

**TRICIA SONNEBORN, EXAMINING ATTOR-  
NEY**



Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3514  
www.uspto.gov

REGISTRATION NO: 2167682 SERIAL NO: 75/319817 MAILING DATE: 04/28/2004  
REGISTRATION DATE: 06/23/1998  
MARK: WACKY QUACKERS  
REGISTRATION OWNER: OZARKS SCENIC TOURS, LLC

**CORRESPONDENCE ADDRESS:**

THOMAS Y. AUNER  
3432 CULPEPPER COURT  
P.O. BOX 10764  
SPRINGFIELD, MO 65808-0764

**NOTICE OF ACCEPTANCE**

15 U.S.C. Sec. 1058(a)(1)

THE COMBINED AFFIDAVIT FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058. ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.

\*\*\*\*\*

**NOTICE OF ACKNOWLEDGEMENT**

15 U.S.C. Sec. 1065

THE AFFIDAVIT FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 15 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1065. ACCORDINGLY, THE SECTION 15 AFFIDAVIT IS ACKNOWLEDGED.

\*\*\*\*\*

**THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):**  
028.

NEWTON, DANA L  
PARALEGAL SPECIALIST  
POST-REGISTRATION DIVISION  
(703)308-9500

**PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION  
CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION**  
ORIGINAL

**REQUIREMENTS FOR MAINTAINING A FEDERAL TRADEMARK REGISTRATION)**  
**I) SECTION 8: AFFIDAVIT OF CONTINUED USE** The registration shall remain in force for 10 years, except that the registration shall be canceled for failure to file an Affidavit of Continued Use under Section 8 of the Trademark Act, 15 U.S.C. Sec. 1058, at the end of each successive 10-year period following the date of registration. **Failure to file the Section 8 Affidavit will result in the cancellation of the registration.**  
**II) SECTION 9: APPLICATION FOR RENEWAL** The registration shall remain in force for 10 years, subject to the provisions of Section 8, except that the registration shall expire for failure to file an Application for Renewal under Section 9 of the Trademark Act, 15 U.S.C. Sec. 1059, at the end of each successive 10-year period following the date of registration. **Failure to file the Application for Renewal will result in the expiration of the registration.**



NO FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS WILL BE SENT TO THE REGISTRANT BY THE PATENT AND TRADEMARK OFFICE. IT IS RECOMMENDED THAT THE REGISTRANT CONTACT THE PATENT AND TRADEMARK OFFICE APPROXIMATELY ONE YEAR BEFORE THE EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451  
www.uspto.gov

REGISTRATION NO: 2167682    SERIAL NO: 75/319817    MAILING DATE: 07/07/2008  
REGISTRATION DATE: 06/23/1998  
MARK: WACKY QUACKERS  
REGISTRATION OWNER: RIDE THE DUCKS INTERNATIONAL, LLC

**CORRESPONDENCE ADDRESS:**

Rebecca J. Brandau  
Husch Blackwell Sanders LLP  
Suite 600  
190 Carondelet Plaza  
St. Louis MO 63105

**NOTICE OF ACCEPTANCE**

15 U.S.C. Sec. 1058(a)(3)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058. ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.

\*\*\*\*\*  
**NOTICE OF RENEWAL**

15 U.S.C. Sec. 1059(a)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 9 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1059. ACCORDINGLY, THE REGISTRATION IS RENEWED.

\*\*\*\*\*  
**THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):**  
028.

CONLEY, JOYCE MARIE  
PARALEGAL SPECIALIST  
POST-REGISTRATION DIVISION  
571-272-9500

**PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION  
CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION  
ORIGINAL**

**REQUIREMENTS FOR MAINTAINING A FEDERAL TRADEMARK REGISTRATION) SECTION 8: AFFIDAVIT  
OF CONTINUED USE** The registration shall remain in force for 10 years, except that the registration shall be canceled for failure to file an Affidavit of Continued Use under Section 8 of the Trademark Act, 15 U.S.C. Sec. 1058, at the end of each successive 10-year period following the date of registration.



**Failure to file the Section 8 Affidavit will result in the cancellation of the registration.**

**II) SECTION 9: APPLICATION FOR RENEWAL** The registration shall remain in force for 10 years, subject to the provisions of Section 8, except that the registration shall expire for failure to file an Application for Renewal under Section 9 of the Trademark Act, 15 U.S.C. Sec. 1059, at the end of each successive 10-year period following the date of registration. **Failure to file the Application for Renewal will result in the expiration of the registration.**

**NO FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS WILL BE SENT TO THE REGISTRANT BY THE PATENT AND TRADEMARK OFFICE. IT IS RECOMMENDED THAT THE REGISTRANT CONTACT THE PATENT AND TRADEMARK OFFICE APPROXIMATELY ONE YEAR BEFORE THE EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.**



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451  
www.uspto.gov

REGISTRATION NO: 2484276 SERIAL NO: 75/686528 MAILING DATE: 09/13/2007  
REGISTRATION DATE: 09/04/2001  
MARK: NO DRAWING-SENSORY MARK  
REGISTRATION OWNER: RIDE THE DUCKS INTERNATIONAL, LLC

**CORRESPONDENCE ADDRESS:**

Rebecca J. Brandau  
Husch & Eppenger, LLC  
Suite 600  
190 Carondelet Plaza  
St. Louis MO 63105

**NOTICE OF ACCEPTANCE**

15 U.S.C. Sec. 1058(a)(1)

THE COMBINED AFFIDAVIT FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058. ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.

\*\*\*\*\*

**NOTICE OF ACKNOWLEDGEMENT**

15 U.S.C. Sec. 1065

THE AFFIDAVIT FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 15 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1065. ACCORDINGLY, THE SECTION 15 AFFIDAVIT IS ACKNOWLEDGED.

\*\*\*\*\*

**THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):**

039.

RICE, GREGGORY A  
PARALEGAL SPECIALIST  
POST-REGISTRATION DIVISION  
571-272-9500

**PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION  
CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION  
ORIGINAL**

**REQUIREMENTS FOR MAINTAINING A FEDERAL TRADEMARK REGISTRATION) SECTION 8: AFFIDAVIT  
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shall be canceled for failure to file an Affidavit of Continued Use under Section 8 of the Trademark Act,  
15 U.S.C. Sec. 1058, at the end of each successive 10-year period following the date of registration.  
**Failure to file the Section 8 Affidavit will result in the cancellation of the registration.**



**II) SECTION 9: APPLICATION FOR RENEWAL** The registration shall remain in force for 10 years, subject to the provisions of Section 8, except that the registration shall expire for failure to file an Application for Renewal under Section 9 of the Trademark Act, 15 U.S.C. Sec. 1059, at the end of each successive 10-year period following the date of registration. **Failure to file the Application for Renewal will result in the expiration of the registration.**

**NO FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS WILL BE SENT TO THE REGISTRANT BY THE PATENT AND TRADEMARK OFFICE. IT IS RECOMMENDED THAT THE REGISTRANT CONTACT THE PATENT AND TRADEMARK OFFICE APPROXIMATELY ONE YEAR BEFORE THE EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.**



**Husch &  
Eppenger, LLC**  
*Attorneys and Counselors at Law*

190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105-3441  
314.480.1500  
Fax 314.480.1505  
www.husch.com

February 7, 2008

**VIA CERTIFIED MAIL and email: jscan@bayquackers.com**

Mr. John Scannell, President, CEO  
Bay Quackers, LLC  
2800 Leavenworth Street  
San Francisco, CA 94133

Re: Ride The Ducks International, LLC  
Trademark Matter  
Our Ref.: 57002.052

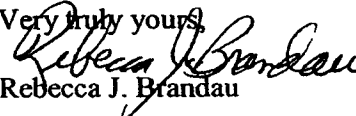
Dear Mr. Scannell:

We represent Ride the Ducks International, LLC ("RTDI"), a Herschend Family Entertainment Corporation company. It has come to our attention that you operate a retail business in which you offer tours of San Francisco in WWII landing craft under the trade names "Bay Quackers" and "San Francisco Duck Tours."

RTDI is the owner of US Trademark No. 2484276 (copy enclosed) for a sound consisting of a quacking noise made by tour guides and tour participants by use of duck call devices throughout various portions of the tours. The subject mark is registered for use in connection with land and sea "duck" tours and has been used since at least as early as August 22, 1996. This mark was registered on the Principal Register in 2001 and is now incontestable. Your use of the same or similar mark for a similar business is likely to cause consumer confusion.

The purpose of this letter is to demand that you immediately cease and desist from use of the RTDI registered quacking sound, made by "duck call" devices, in association with the Bay Quackers-San Francisco Duck Tours or any confusingly similar trademark or service mark in connection with your Duck Tour business.

Please contact me immediately upon your receipt of this letter to provide assurances that appropriate actions will be taken.

Very truly yours,  
  
Rebecca J. Brandau

jrm/rjb  
Enclosure

2883785.01



**HUSCH**  
**BLACKWELL**  
**SANDERS**  
LLP

Rebecca J. Brandau  
DIRECT 314.480.1872 • FAX 314.480.1505 • rebecca.brandau@huschblackwell.com  
190 CARONDELET PLAZA, SUITE 600, ST. LOUIS, MO 63105  
www.huschblackwell.com

May 16, 2008

**VIA EMAIL AND FIRST CLASS MAIL: jscan@bayquackers.com**

Mr. John Scannell, President, CEO  
Bay Quackers, LLC  
2800 Leavenworth Street  
San Francisco, CA 94133

Re: Ride The Ducks International, LLC  
Trademark Matter  
Our Ref.: 57002.052

Dear Mr. Scannell:

We have yet to receive a response from you to our letter of February 7, 2008 in the above-referenced matter. We and our client, Ride The Ducks International, LLC, have been more than patient in this matter. However, rather than contacting us as requested, Bay Quackers reportedly continues to use the infringing duck call sound on its San Francisco Duck Tours. Please correct me if this information is incorrect.

Because you may not understand the importance of this situation we urge you to contact your intellectual property counsel *post haste*. Then, please provide us with the courtesy of a response in no less than two weeks from the date of this letter.

Very truly yours,  
HUSCH BLACKWELL SANDERS LLP



Rebecca J. Brandau, Esq.

bhs/jr





Rebecca J. Brandau  
Attorney  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105  
314.480.1872  
fax: 314.480.1505  
rebecca.brandau@huschblackwell.com

December 2, 2008

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Mr. John Scannell, President, CEO  
Bay Quackers, LLC  
2800 Leavenworth Street  
San Francisco, CA 94133

Re: Ride The Ducks International, LLC  
Trademark Matter  
Our Ref.: 57002-149

Dear Mr. Scannell:

Further to our letters of February 7 and May 16, 2008, we understand that you continue to operate San Francisco Bay Quackers, including using the infringing duck call sound made by our client's WACKY QUACKERS toy duck calls. You are continuing to ignore our client's intellectual property rights in its registered and incontestable US trademarks. Copies of US Reg. No. 2484276 and 2167682 are attached for your convenience. Your actions are clearly designed to confuse the consuming public between San Francisco Bay Quackers and Ride The Ducks International, LLC and their respective services. In fact, extensive evidence of actual confusion between your company and our client's has been found to exist. Therefore, your actions constitute unfair competition, trade dress infringement and trademark infringement and are actionable under the trademark laws of the United States.

Again, we urge you to contact your intellectual property counsel for advice at once. Please let us hear from you within ten days of the date of this letter if litigation is to be avoided.

Very truly yours,

A handwritten signature in cursive script that reads "Rebecca J. Brandau".  
Rebecca J. Brandau

bhs  
Enclosures



**HERSCHEND  
FAMILY  
ENTERTAINMENT**

creating memories worth repeating™

5445 Triangle Parkway, Suite 200  
Norcross Georgia 30092  
phone 770-441-1940  
fax 770-441-3266

April 20, 2009

**VIA OVERNIGHT DELIVERY**  
**RETURN RECEIPT REQUESTED**

Mr. John Scannell, President, CEO  
Bay Quackers, LLC  
2800 Leavenworth Street  
San Francisco, CA 94133

Re: Ride The Ducks International, LLC  
Trademark Matter

Dear Mr. Scannell:

I am General Counsel for Herschend Family Entertainment Corporation, the parent company of Ride The Ducks International, LLC ("RTDI"). Over the past year RTDI, through its outside counsel, has sent you three letters (dated February 7, May 16, and December 2, 2008) demanding that you cease and desist the use of the infringing duck call sound made by RTDI's WACKY QUACKERS toy duck calls. It is my understanding that you have failed to make any response to these letters and that you continue the unauthorized use of RTDI's intellectual property rights in its registered and incontestable US trademarks.

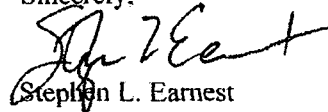
It has been RTDI's desire to avoid litigation in this matter. Accordingly, in one last attempt to resolve this matter amicably, RTDI is offering to settle this dispute by forgoing past damages it is entitled to because of your actions in return for you ceasing to use RTDI's intellectual property going forward. I have attached a settlement agreement with this letter setting forth the terms of our offer of settlement and compromise. If you accept this offer of settlement, please sign the agreement, without change, and return it to me within ten (10) days. If I have not received the signed agreement within ten (10) days of your receipt of this letter, this offer of settlement is withdrawn.



If you fail to accept this offer, RTDI is prepared to take the necessary legal action to prohibit you from continuing your unfair competition, trade dress infringement and trademark infringement and creating a likelihood of confusion among consumers.

I urge you to contact your intellectual property counsel for advice at once.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen L. Earnest", written over the printed name.

Stephen L. Earnest

Enclosure



## SETTLEMENT AGREEMENT

This Confidential Service Mark License and Settlement Agreement ("Settlement Agreement" or "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2009 ("Effective Date") between Ride The Ducks International, LLC ("RTDI"), a Missouri Limited Liability Company, and Bay Quackers, LLC, a California limited liability company ("BAY QUACKERS").

### RECITALS

WHEREAS, RTDI provides sightseeing tours using an amphibious vehicle under the tradename Ride The Ducks in various locations throughout the United States; and

WHEREAS, RTDI is the owner of all intellectual property rights for its trademark of WACKY QUACKERS, United States Patent and Trademark Office US Reg. No. 2164682, and for its trademark/service mark of the sound of a quacking noise made by a toy duck call, United States Patent and Trademark Office US Reg. No. 2484276, (the "Marks") related to the sightseeing business that it provides; and

WHEREAS, BAY QUACKERS provides similar sightseeing tour services ("Services") in the San Francisco area; and

WHEREAS, RTDI and BAY QUACKERS have a dispute regarding BAY QUACKERS' unauthorized use of RTDI's Marks in the past ("Dispute"); and

WHEREAS, RTDI and BAY QUACKERS desire to settle the Dispute subject to the terms and conditions set forth below.

NOW THEREFORE, in consideration of the releases and mutual promises contained herein exchanged between the parties, the receipt and sufficiency of which are hereby acknowledged, the parties, in order to implement the settlement and consistent therewith, agree to the following terms and conditions:

### AGREEMENT

1. **Recitals.** The forgoing Recitals are fully incorporated into and a part of this Settlement Agreement.
2. **Terms and Conditions of Settlement:**

(a) Within one (1) day of signing this Agreement, BAY QUACKERS, including its predecessors, successors, parents, direct subsidiaries, indirect subsidiaries, affiliates, assigns, heirs, agents, and attorneys, will cease and desist any and all uses of the Marks, and any confusingly similar trademark or service marks, and will not use such Marks going forward in any advertising, operations, or provision of Services that are provided by BAY QUACKERS. BAY QUACKERS acknowledges that the Marks and all goodwill associated therewith are, and shall remain, the sole property of RTDI and that no rights have been conferred upon BAY QUACKERS. Additionally, BAY



QUACKERS will not challenge the validity of the Marks or make any claim adverse to RTDI regarding the Marks

(b) As full and final settlement of the Dispute, pursuant to the terms and conditions of this Agreement, RTDI shall forgo monetary damages it has incurred and is entitled to as a result of the unauthorized use of its Marks by BAY QUACKERS.

**3. Release and Discharge:**

(a) BAY QUACKERS, its predecessors, successors, parents, direct subsidiaries, indirect subsidiaries, affiliates, assigns, heirs, agents, and attorneys hereby remise, release and forever discharge RTDI, and all their predecessors, successors, parents, direct subsidiaries, indirect subsidiaries, affiliates, and their assigns, agents, directors, officers, employees, heirs, personal representatives, and shareholders from and against all actions, causes of action, claims, suits, debts, damages, judgments, liabilities, demands and controversies whatsoever, whether matured or unmatured, whether at law or in equity, whether before a local, state or federal court or state or federal administrative agency, commission or arbitration administrator, and whether now known or unknown, liquidated or unliquidated, that BAY QUACKERS now has or may have had, or thereafter claims to have, regarding the issues arising out of or directly or indirectly related to the Dispute, on behalf of itself, or any other person or entity, at any time prior to and including the Effective Date of this Agreement.

(b) RTDI, its predecessors, successors, parents, direct subsidiaries, indirect subsidiaries, affiliates, assigns, heirs, agents, and attorneys hereby remise, release and forever discharge BAY QUACKERS, and all their predecessors, successors, parents, direct subsidiaries, indirect subsidiaries, affiliates, and their assigns, agents, directors, officers, employees, heirs, personal representatives, and shareholders from and against all actions, causes of action, claims, suits, debts, damages, judgments, liabilities, demands and controversies whatsoever, whether matured or unmatured, whether at law or in equity, whether before a local, state or federal court or state or federal administrative agency, commission or arbitration administrator, and whether now known or unknown, liquidated or unliquidated, that RTDI now has or may have had, or thereafter claims to have, regarding the issues arising out of or directly or indirectly related to the Dispute, on behalf of itself, or any other person or entity, at any time prior to and including the Effective Date of this Agreement.

4. **Governing Law.** This Agreement shall be governed and construed in accordance with the substantive laws of the State of Missouri, without regard to that state's choice of law or conflict of laws principles. The terms of this Agreement may be enforced by the state or federal regulatory authority with jurisdiction over similar disputes and authority to order the remedy sought by the non-breaching party and by the appropriate state or federal court.
5. **Modifications.** This Agreement may not be modified or amended, except in a writing signed on behalf of both parties by their duly authorized representatives.



6. **Relationship.** Neither party is, nor represents itself to be, an agent, employee, partner or joint venturer of the other, nor will either party transact any business on the other's behalf, nor in any form make promises, representations or warranties that incur any liability for or on behalf of the other party.
7. **Confidentiality.** This Agreement shall remain confidential and its terms shall not be disclosed by either party, or by their respective employees and agents, except as required for implementation or to the extent otherwise required by law or to enforce the parties' rights under the Agreement. If either party receives a lawful order or other process that requires disclosure of the terms of the Agreement, that party shall give prompt written notice to the other party of such order or process, and each party shall cooperate reasonably with the other if one of them wishes to try to obtain a protective order or other lawful means to avoid such compelled disclosure.
8. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of each of the signatories hereto and their representatives, predecessors, successors, assigns, agents, shareholders, officers, directors (in their individual and representative capabilities), subsidiaries, affiliates, parent corporations, if any, joint ventures, heirs, executors, administrators, trustees, and attorneys.
9. **Joint Efforts.** This Agreement is and shall be deemed for all purposes to have been prepared for the benefit of and through the joint efforts of the parties hereto and shall not be construed or interpreted against the party originating or preparing it.
10. **Authorized Representatives.** Each party represents and warrants that its representatives executing this Agreement are fully authorized to do so on the party's behalf.
11. **Liability.** The parties understand and agree that this Agreement, any consideration given or accepted in connection with it, and the covenants made in it are all made, given, and accepted in settlement and compromise of disputed claims and are not an admission of liability or wrongdoing by either party.
12. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same document.
13. **Legal Advice.** Each party hereto agrees that it has had the opportunity to seek and has sought from lawyers any such advice, as it deems appropriate with respect to signing this document, or the meaning of it. Each party has undertaken such independent investigation and evaluation as it deems appropriate and is entering into this Agreement in reliance on that information and not in reliance on any advice, disclosure, representation or information provided by or expected from any other party or party's lawyers. This is an agreement of settlement and compromise, made in recognition that the parties may have different or incorrect understandings, information and contentions, as to facts and law, and with each party compromising and settling any potential correctness or incorrectness of its



understandings, information and contentions as to the facts and law, so that no misunderstanding or misinformation shall be a ground for rescission hereof. Each party bears its own attorneys fees and costs.

14. **Entire Agreement of the Parties.** This Agreement constitutes the entire agreement with respect to the subject matter contained herein and supersedes all prior agreements and documents regarding this subject matter. No terms or conditions of this Agreement may be modified or waived except by an instrument in writing duly signed by or on behalf of each of the parties hereto.
15. **Severability.** If any provision of this Agreement, or part thereof, shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not invalidate the entire Agreement, unless such construction would be unreasonable. The Agreement shall be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each party shall be construed and enforced accordingly. Provided, however, that in the event such invalid or unenforceable provision or provisions are essential elements of this Agreement and substantially impair the rights or obligations of either party, the parties shall promptly negotiate a replacement provision or provisions.
16. **Title and Captions.** Title and captions to each article and paragraph herein are for reference only and have no substantive meaning.
17. **Additional Documentation.** The parties agree to cooperate fully, to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
18. **Assignment.** BAY QUACKERS may not assign this Agreement in whole or in part without the prior written consent of the RTDI and any attempt to assign the Agreement without written consent shall be void.

[remainder of page intentionally left blank]



IN WITNESS THEREOF, the parties have executed this Agreement by their duly authorized representatives in duplicate originals, each of which shall be deemed an original on the dates set forth below.

**Bay Quackers, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Ride The Ducks International, LLC**

By: \_\_\_\_\_  
Name: Chris Herschend  
Title: President  
Date: \_\_\_\_\_