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10 Attorneys for Plaintiffs
ROCKSTAR, INC. and
11 RUSSELL G. WEINER

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF NEVADA**

15 ROCKSTAR, INC., a Nevada corporation, and
16 RUSSELL G. WEINER, an individual,

17 Plaintiffs,

18 v.

19 RAP STAR 360 LLC, a Delaware limited
20 liability company, and ERIC BARRIER, an
individual,

21 Defendants.
22

Case No.

**COMPLAINT FOR TRADEMARK
INFRINGEMENT; FALSE
DESIGNATION OF ORIGIN AND
TRADE DRESS INFRINGEMENT;
COMMON LAW UNFAIR
COMPETITION; STATUTORY
UNFAIR COMPETITION; AND
UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

1 Plaintiffs Rockstar, Inc. and Russell G. Weiner (“Weiner”) (collectively, “Plaintiffs” or
2 “Rockstar”), for their Complaint against defendants Rap Star 360, LLC (“Rap Star”) and Eric Barrier
3 (“Barrier”) (Rap Star and Barrier shall hereinafter be referred to collectively as “Rap Star Energy” or
4 “Defendants”) allege as follows:

5 **JURISDICTION AND VENUE**

6 1. This Court has personal jurisdiction over the Defendants because, upon information
7 and belief, they have purposefully availed themselves of the privilege of conducting business in the
8 District of Nevada and Plaintiff's claims arise out of or are related to the Defendants' contacts with
9 the State of Nevada. In addition or in the alternative, the Defendants have committed the tortious
10 acts identified in this Complaint outside of the State of Nevada and have expressly aimed their
11 conduct at the Plaintiff in the State of Nevada, the effects of which the Plaintiffs have suffered in the
12 State of Nevada.

13 2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. § 1121 and 28
14 U.S.C. §§ 1331, 1332, 1338 and 1367. Rockstar's claims are, in part, based on violations of the
15 Lanham Act, as amended, 15 U.S.C. §§ 1051, *et seq.* The Court has jurisdiction over the state law
16 claims pursuant to 28 U.S.C. §§ 1332, 1338(b), and 1367.

17 3. Venue properly lies within the District of Nevada pursuant to 28 U.S.C. §1391(b)-(c).

18 **THE PARTIES**

19 4. Plaintiff Rockstar, Inc. is a Nevada corporation with a corporate office in Las Vegas,
20 Nevada. Plaintiff Russell G. Weiner is the Chief Executive Officer of Rockstar, Inc.

21 5. Plaintiffs are informed and believe, and on that basis allege, that Defendant Rap Star
22 360, LLC is a limited liability company organized and existing under the laws of the State of
23 Delaware.

24 6. Plaintiffs are informed and believe, and on that basis allege, that Defendant Eric
25 Barrier is an individual who resides in Elmhurst, New York.

26 7. At all times herein mentioned, each defendant was the agent, employee, partner, joint
27 venturer, aider and abetter, alter ego, and co-conspirator of or with each of the remaining defendants,
28 and in doing the things hereinafter alleged, was acting within the course and scope of such agency,

1 employment, partnership, joint venture, and conspiracy, and each defendant ratified and approved
2 the acts of the remaining defendants.

3 **FACTUAL BACKGROUND**

4 **Rockstar's Business and Trademarks**

5 8. Mr. Weiner is the owner of numerous U.S. Trademark Registrations for ROCKSTAR
6 and similar marks for energy drinks, which he has licensed to Rockstar, Inc. These trademark
7 registrations include the following: ROCKSTAR ENERGY DRINK (U.S. Reg. No. 2613067);
8 ROCKSTAR (Stylized) (U.S. Reg. No. 2784403); PARTY LIKE A ROCKSTAR (U.S. Reg. No.
9 2545247); ROCKSTAR JUICED (U.S. Reg. No. 3190229); ROCKSTAR (U.S. Reg. No. 3398516);
10 ROCKSTAR ROASTED (U.S. Reg. No. 3423897); ROCKSTAR PUNCHED (U.S. Reg. No.
11 3508269); and ROCKSTAR ENERGY SHOT (Stylized) (U.S. Reg. No. 3674171). True and correct
12 copies of these federal trademark registrations are attached hereto as Exhibit A.

13 9. Mr. Weiner has continuously and substantially licensed his ROCKSTAR trademarks
14 in interstate commerce for Rockstar, Inc.'s energy drinks since 2001, with great success. Rockstar,
15 Inc. is a well-known producer and international distributor of such energy beverages as
16 ROCKSTAR ENERGY DRINK®, ROCKSTAR® ZERO CARB, SUGAR FREE ROCKSTAR®,
17 ROCKSTAR JUICED®, ROCKSTAR ROASTED®, ROCKSTAR PUNCHED®, and ROCKSTAR
18 ENERGY SHOT®, in addition to other beverages produced under the authority of Rockstar, Inc.
19 (collectively, "Rockstar Energy Drinks"), which are premium, high-quality energy drinks.

20 10. In addition to offering energy drinks in 16 ounce, 22 ounce wide mouth, and 24 ounce
21 containers, among others, Rockstar, Inc. has long offered its energy drinks in an 8.4 ounce container
22 under the ROCKSTAR mark.

23 11. Rockstar Energy Drinks are among the most popular energy drinks in the United
24 States. Rockstar has sold over one **billion** cans of product and its annual sales equal several hundred
25 million dollars.

26 12. Rockstar Energy Drinks have between 50,000–100,000 nationwide points of
27 distribution, including grocery stores, convenience stores, liquor stores, warehouse retailers (e.g.
28 Costco), restaurants, bars, nightclubs, gas stations, and other retail establishments located throughout

1 the United States. Such points of distribution include, but are not limited to, Safeway, Albertson's,
2 Vons, Walgreens, Longs, Circle K, Publix, Sam's, Wal-Mart, Chevron, Philips 66, Shell-Texaco,
3 and 7-Eleven, among many others.

4 13. Rockstar also maintains Internet sites on the World Wide Web including those at the
5 following addresses: www.rockstar69.com, www.rockstar69.net, www.rockstarenergy.com, and
6 www.rockstarenergydrink.com, amongst others.

7 14. Rockstar's beverage containers and promotional and advertising materials feature the
8 tagline PARTY LIKE A ROCKSTAR®.

9 15. The above registrations provide constructive notice of the registrant's claim of
10 exclusive ownership of these marks. They also constitute prima facie evidence of the validity of
11 these marks, the registrations thereof, and the registrant's exclusive right to use and license said
12 marks in commerce in connection with the goods specified in said registrations, as provided by
13 Sections 7 and 22 of the Lanham Act, 15 U.S.C. §§1057 and 1072.

14 16. Through its extensive use, Rockstar also owns common law trademark rights in the
15 trademark ROCKSTAR and similar marks for energy drinks, including but not limited to the
16 prominently displayed tagline PARTY LIKE A ROCKSTAR®. Collectively, the federally
17 registered and common law trademarks described in paragraphs 9 through 16 shall be referred to as
18 "ROCKSTAR Marks."

19 17. Rockstar has devoted substantial time, effort and resources to the development and
20 promotion throughout the United States of the ROCKSTAR Marks. As a result of these promotional
21 efforts, the purchasing public has come to know, rely upon, and recognize the business and goods of
22 Rockstar by such trademarks.

23 18. By virtue of Rockstar's marketing efforts and expenditures, and as a result of the
24 excellence of its products, Rockstar's ROCKSTAR Marks have achieved a valuable reputation and a
25 high degree of goodwill.

26 **Rockstar Star Marks**

27 19. Among its other trademark rights, Rockstar has for many years used distinctive logos
28 and marks on its products, point-of-sale materials, advertisements, and other marketing and

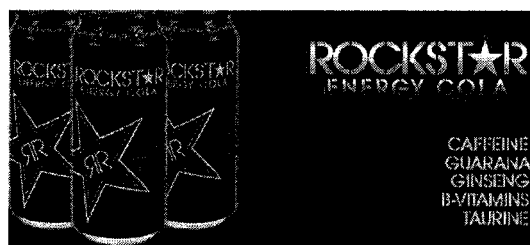
1 promotional materials that prominently feature a star, both as a substitute for the “A” in
 2 ROCKSTAR, and, more prominently, as a stand-alone logo mark (“Rockstar Star Marks”). Typical
 3 of the Rockstar Star Marks are the following appearing in Rockstar’s U.S. Registration Nos.
 4 2784403, 3230400, and 3071688 for ROCKST*R and U.S. Registration No. 2,895,083 for the star
 5 logo mark:



14 20. Since its inception, Rockstar has invested considerable time and money establishing
 15 exclusive rights in the Rockstar Star Marks. Partially by virtue of these efforts, the Rockstar Star
 16 Marks are well known by the relevant consumers in the marketplace as originating from Rockstar, in
 17 addition to Rockstar’s rights in its trademark registrations listed above.

18 **Rockstar Trade Dress**

19 21. Since 2001, Rockstar’s beverage containers for its ROCKSTAR ENERGY DRINK®
 20 and promotional and advertising materials for Rockstar’s products have featured a distinctive black
 21 and gold trade dress. Representative images illustrating certain aspects of the trade dress of
 22 Rockstar’s well known and distinctive energy drink containers are shown below:



22. Rockstar has devoted substantial time, effort and resources to the development and
 promotion throughout the United States of energy drinks sold under the trade dress associated with

1 the ROCKSTAR Marks (“Rockstar Trade Dress”). As a result of these promotional efforts, the
2 purchasing public has come to know, rely upon, and recognize the business and goods of Rockstar
3 by the Rockstar Trade Dress, which distinguishes Rockstar’s products from those of others. As a
4 result, the Rockstar Trade Dress has acquired a secondary meaning in the minds of the consuming
5 public of Nevada and nationwide as identifying or being associated with Rockstar exclusively.
6 Because of the consistent quality of Rockstar’s products marketed in connection with the Rockstar
7 Trade Dress, Rockstar has established valuable goodwill and reputation for those products. The
8 Rockstar Trade Dress is original, arbitrary, and nonfunctional.

9 23. In addition to the ROCKSTAR® trademark and tagline PARTY LIKE A
10 ROCKSTAR®, Rockstar’s promotional and advertising efforts prominently feature musical
11 entertainment themes, amongst others, that cover various genres including rap. Rockstar has
12 expended several million dollars promoting its beverages in its extensive promotions and
13 advertisements, which include a national billboard campaign costing several million dollars, print,
14 on-line advertisements, promotions at various entertainment events including the Rockstar Energy
15 Drink Alternative Press Tour, Rockstar Mayhem Festival, Rockstar Taste of Chaos, Rockstar Energy
16 Drink Get A Life Tour 2008, BMX Bumbershoot Music and Arts Festival, Rock The Planet at
17 Planet Hollywood, Ernie Ball Battle of the Bands, MUCC Tour, Insomniac Attack Tour, American
18 Music Awards, World Music Awards, Radio Music Awards, Soul Train Awards, and TV Land
19 Awards, among many others. Rockstar was also a title sponsor of the Rock the Bells musical
20 festival, featuring such prominent rap artists as Public Enemy, Wu-Tang Clan, Nas, and Mos Def,
21 amongst many others. Accordingly, consumers associate energy drinks that are offered in
22 connection with a variety of music themes with Rockstar.

23 **Rap Star Energy’s Business and Infringement**

24 24. Rockstar has recently learned that Defendants are using the confusing similar
25 trademark RAPSTAR 360 and trade name RAP STAR 360 for a directly competitive energy drink
26 (“RAPSTAR”), which infringes the ROCKSTAR Marks. Defendants have also adopted a star logo
27 that is strikingly similar to the Rockstar Star Marks. To further exacerbate confusion, Defendants’
28 promotional materials also depict black and gold product packaging that is confusingly similar in

1 appearance to the Rockstar Trade Dress. Rockstar is informed and believes, and on that basis
 2 alleges, that Defendants are selling or intend to sell their RAPSTAR energy drinks through some of
 3 the same retail outlets where Rockstar sells its energy drinks in Nevada.

4 **Trademark Infringement**

5 25. Defendants have adopted and used the trademark RAPSTAR for an energy drink,
 6 despite Rockstar's established common law rights and federal registrations in the ROCKSTAR
 7 Marks for energy drinks, without permission or authority from Rockstar. The RAP STAR 360 trade
 8 name and RAPSTAR trademark is nearly identical to Rockstar's ROCKSTAR Marks, as well as
 9 their meaning. Rap Star 360, LLC is the recorded owner of U.S. Trademark Application Ser. No.
 10 77682821 for RAP STAR 360 for "non alcoholic beverages, namely, energy drinks, isotonic drinks,
 11 hypertonic drinks, sports drinks and soft drinks."

12 26. Rockstar is informed and believes, and on that basis alleges, that Defendants adopted
 13 the RAPSTAR trademark and trade name RAP STAR with full knowledge of Rockstar's goods and
 14 trademarks, and with the intention that consumers would be confused into believing that
 15 Defendants' energy drink was sponsored, associated, or affiliated in some way, with Rockstar.

16 27. Rockstar is informed and believes, and on that basis alleges, that Defendants market
 17 and promote their confusingly similar energy drinks on the World Wide Web including at the
 18 following Internet address: www.rapstar360.com and www.rapstar360.net , which are very similar
 19 to Rockstar's www.rockstar69.com and www.rockstar69.net Internet addresses. Defendants also
 20 market and promote their RAPSTAR energy drinks on Facebook®, Twitter®, YouTube®, and
 21 MySpace®.

22 28. To further exacerbate consumer confusion, Defendants' also adopted a star logo mark
 23 that is confusingly similar to the Rockstar Star Marks. A representative image of Defendants' star
 24 logo mark ("Rap Star Star Logo") and overall trade dress packaging is shown below:



1
2 29. Defendants' product packaging and promotional materials prominently display the
3 Rap Star Star Logo. In fact, the Rap Star Star Logo is identical to the star that appears on Rockstar's
4 product packaging, and is also tilted.

5 30. Rockstar has no control over the nature and quality of Defendants' RAPSTAR energy
6 drink. Any failure, neglect, default or other negative association arising due to Defendants'
7 promotion and sales of RAPSTAR energy drinks will reflect negatively on Rockstar's reputation and
8 goodwill. Further, because of the fame of Rockstar's energy drinks, it will be natural for
9 Defendants' customers and potential customers to mistakenly assume that RAPSTAR energy drinks
10 are sold with Rockstar's authorization, sponsorship, or consent.

11 31. Because Rockstar's and Defendants' goods are directly competitive, consumers will
12 mistakenly assume that said goods and their sources are associated or affiliated. Such a result
13 significantly undermines Rockstar's substantial efforts to establish its identity in the highly
14 competitive energy drink field.

15 **Trade Dress Infringement**

16 32. In addition to using a confusingly similar trademark, Rockstar is informed and
17 believes, and on that basis alleges, that without permission or authority from Rockstar, Defendants
18 have infringed Rockstar's Rockstar Trade Dress by making, using, promoting, advertising, selling
19 and/or offering to sell an energy drink known as RAPSTAR using promotional materials and
20 packaging which depict a beverage container and related product packaging that are confusingly
21 similar in appearance to Rockstar's Rockstar Trade Dress. Amongst other things, the trade dress of
22 Rap Star Energy's energy drink features a black and gold container, similar to Rockstar's original
23 Rockstar Energy Drink, with lettering in similar colors and fonts, a tilted gold star (similar to
24 Rockstar's), and prominent use of the RAPSTAR mark (which is confusingly similar to
25 ROCKSTAR) (collectively, "Rap Star Trade Dress"), all for a product directly competitive to
26 Rockstar's products.

1 33. Rockstar is informed and believes, and on that basis alleges, that Defendants'
2 unauthorized use of the Rap Star Trade Dress is intended to trade upon the goodwill and substantial
3 recognition associated with Rockstar's Rockstar Trade Dress.

4 34. Rockstar is informed and believes, and on that basis alleges, that Defendants are using
5 the Rap Star Trade Dress in an attempt to associate themselves with Rockstar or otherwise trade
6 upon Rockstar's reputation.

7 35. Rockstar is informed and believes, and on that basis alleges, that Defendants' use of
8 the Rap Star Trade Dress is designed to cause confusion, mistake or deception.

9 36. Rockstar is informed and believes, and on that basis alleges, that Defendants' purpose
10 is to cause consumers and potential customers to believe that Defendants' RAPSTAR energy drinks
11 are associated with Rockstar or its products when no such association exists.

12 **Further Allegations**

13 37. By virtue of the acts complained of herein, Defendants have created a likelihood of
14 injury to Rockstar's business reputation, caused a strong likelihood of consumer confusion as to the
15 source of origin or relationship of Rockstar's and Defendants' goods, and have otherwise competed
16 unfairly with Rockstar.

17 38. Rockstar is informed and believes, and on that basis alleges, that Defendants' acts
18 complained of herein are willful and deliberate.

19 39. Defendants' acts complained of herein have caused damage to Rockstar in an amount
20 to be determined at trial, and such damages will continue to increase unless Defendants are enjoined
21 from their wrongful actions.

22 40. Defendants' acts complained of herein have caused Rockstar to suffer irreparable
23 injury to its business. Rockstar will suffer substantial loss of goodwill and reputation unless and
24 until Defendants are preliminarily and permanently enjoined from the wrongful actions complained
25 of herein.

26 41. Despite Rockstar's numerous attempts to resolve the dispute amicably, Defendants
27 have persisted in using the RAP STAR trade name and RAPSTAR trademark, Rap Star Star Logo,
28 and Rap Star Trade Dress, leaving Rockstar no choice but to file this Complaint.

1 **FIRST CAUSE OF ACTION**
2 **(Trademark Infringement)**
3 **(15 U.S.C. § 1114)**

4 42. Rockstar realleges and incorporates by reference the allegations of Paragraphs 1
5 through 41.

6 43. Defendants' actions as described above and Defendants' use of the RAPSTAR
7 trademark and Rap Star Star Logo to promote their energy drinks constitutes trademark infringement
8 in violation of Section 32 of the Lanham Act, 15 U.S.C. §1114.

9 44. Defendants' adoption and use of marks in interstate commerce so similar to
10 Rockstar's ROCKSTAR Marks and Rockstar Star Marks have caused, and continue to cause,
11 irreparable injury to the value and goodwill of the ROCKSTAR Marks and Rockstar Star Marks, as
12 well as to Rockstar's business, goodwill, and reputation. Defendants' actions, if not enjoined, will
13 continue. Rockstar has no adequate remedy at law in that the amount of its damages is difficult to
14 ascertain with certainty.

15 45. As a result of Defendants' infringement, Rockstar has incurred damages in an amount
16 to be proven at trial consisting of, among other things, diversion of sales, and diminution in the
17 value of its goodwill associated with the ROCKSTAR Marks and Rockstar Star Marks.

18 46. Defendants' actions as described above are deliberate, willful, fraudulent and without
19 any extenuating circumstances, and constitute a knowing violation of Rockstar's rights. Rockstar is
20 therefore entitled to recover three times the amount of its actual damages, and attorneys' fees and
21 costs incurred in this action, as this is an "exceptional" case under Section 35 of the Lanham Act, 15
22 U.S.C. §1117.

23 **SECOND CAUSE OF ACTION**
24 **(False Designation and Description; Trade Dress Infringement;**
25 **Unfair Competition Under Federal Law)**
26 **(15 U.S.C. §1125)**

27 47. Rockstar realleges and incorporates by reference the allegations of Paragraphs 1
28 through 46.

48. Consumers have come to identify the popular and distinctive ROCKSTAR Marks
with Rockstar exclusively as the single source of energy drinks bearing such trademarks.

1 49. Consumers have come to identify the popular and distinctive Rockstar Star Marks
2 with Rockstar exclusively as the single source of energy drinks bearing such trademarks.

3 50. Consumers have come to identify the popular and distinctive Rockstar Trade Dress
4 with Rockstar exclusively as the single source of energy drinks bearing such trade dress. The
5 components or elements of the Rockstar Trade Dress are non-utilitarian and non-functional in
6 nature, and have acquired secondary meaning in the marketplace.

7 51. Defendants' interstate use of the designation RAPSTAR and RAP STAR, the Rap
8 Star Star Logo, and confusingly similar trade dress is a false designation of origin, or a false
9 representation, that wrongfully and falsely designates Defendants' goods as originating from, or
10 being connected with, Rockstar, and constitutes the use of false descriptions or representations in
11 interstate commerce. Defendants' use is likely to deceive consumers into believing that Defendants'
12 goods are those of, or associated with, Rockstar, and as a consequence, Defendants' use is likely to
13 divert, and has diverted, consumers away from Rockstar's goods.

14 52. Defendants' actions as described above and their use of the RAP STAR name and
15 RAPSTAR mark, the Rap Star Star Logo, and confusingly similar trade dress to promote their goods
16 to the same audience as that for Rockstar's goods constitutes a false designation of origin and unfair
17 competition in violation of Section 43 of the Lanham Act, 15 U.S.C. §1125.

18 53. Rockstar is informed and believes, and on that basis alleges, that Defendants
19 deliberately chose trade dress that was confusingly similar to the Rockstar Trade Dress, a trademark
20 confusingly similar to the ROCKSTAR Marks, and a star logo mark confusingly similar to the
21 Rockstar Star Marks. As such, Defendants' use in commerce constitutes a willful and deliberate
22 false designation of origin and false description, as well as unfair competition with Rockstar and an
23 attempt to palm off or permit others to palm off RAPSTAR energy drinks as those of Rockstar.

24 54. Defendants' adoption and use of a mark so similar to the ROCKSTAR Marks and
25 Rockstar Star Marks, and trade dress so similar to the Rockstar Trade Dress for energy drinks, have
26 caused, and continue to cause, irreparable injury to the value of Rockstar's business, goodwill, and
27 reputation. Defendants' actions, if not enjoined, will continue, including the sale of their goods
28 through the same channels of trade used by Rockstar and to the same customers targeted by

1 Rockstar. Rockstar has no adequate remedy at law in that the amount of its damages is difficult to
2 ascertain with certainty.

3 55. As a result of Defendants' infringement, Rockstar has incurred damages in an amount
4 to be proven at trial consisting of, among other things, diversion of sales, and diminution in the
5 value of, and goodwill associated with, the ROCKSTAR Marks, Rockstar Star Marks, and the
6 Rockstar Trade Dress.

7 56. Defendants' actions as described above are deliberate, willful, fraudulent and without
8 any extenuating circumstances, and constitute a knowing violation of Rockstar's rights. Rockstar is
9 entitled to recover its actual damages, and attorneys' fees and costs incurred in this action, as this is
10 an "exceptional" case under Section 35 of the Lanham Act, 15 U.S.C. § 1117.

11 **THIRD CAUSE OF ACTION**
12 **(Common Law Unfair Competition)**

13 57. Rockstar realleges and incorporates by reference the allegations of Paragraphs 1
14 through 56.

15 58. Defendants' unauthorized use of the RAP STAR trade name and RAPSTAR
16 trademark, Rap Star Star Logo, and confusingly similar trade dress constitutes passing off and unfair
17 competition of the ROCKSTAR Marks, Rockstar Star Marks, and Rockstar Trade Dress in violation
18 of the common law of Nevada.

19 59. Defendants' wrongful acts have caused and will continue to cause Rockstar
20 irreparable harm. Rockstar has no adequate remedy at law.

21 60. Rockstar is entitled to a judgment enjoining and restraining Defendants from
22 engaging in further acts of infringement and unfair competition.

23 **FOURTH CAUSE OF ACTION**
24 **Nevada Statutory Deceptive Trade Practices**
25 **(Nevada Revised Statutes §598.0915)**

26 61. Rockstar realleges and incorporates by reference the allegations of Paragraphs 1
27 through 60.

28 62. This is an action arising under Nev. Res. Stat. §§ 41.600 and 598.0915, *et. seq.*

1 63. By reason of Defendants' actions as described above, and Defendants' use of the
2 RAPSTAR Mark, Rap Star Star Logo, and Rap Star Trade Dress, Defendants have intentionally
3 caused a likelihood of confusion among the public and have otherwise engaged in deceptive trade
4 practices in violation of Nev. Res. Stat. § 598.0915, *et. seq.*

5 64. Defendants' aforementioned acts have been fraudulent, oppressive and malicious, and
6 have injured Plaintiffs and damaged Plaintiffs in an amount to be determined at trial.

7 65. These wrongful acts have proximately caused and will continue to cause Plaintiffs
8 substantial injury, including injury to their reputation, loss of customers, and or diminution in value
9 of the ROCKSTAR Marks, Rockstar Star Marks, and Rockstar Trade Dress. These actions will
10 cause imminent irreparable harm and injury to Plaintiffs, the amount of which will be difficult to
11 ascertain if they continue. Plaintiffs are without an adequate remedy at law.

12 66. Plaintiffs are entitled to an injunction restraining Defendants, their officers, agents,
13 employees, and all persons acting in concert with them from engaging in further such unlawful
14 conduct, including but not limited to a preliminary and permanent injunction against Defendants'
15 use of the RAPSTAR Mark, Rap Star Star Logo, and Rap Star Trade Dress.

16 **FIFTH CAUSE OF ACTION**
17 **(Unjust Enrichment)**

18 67. Rockstar realleges and incorporates by reference the allegations of Paragraphs 1
19 through 66.

20 68. As a result of their conduct, Defendants have been unjustly enriched at the expense of
21 Rockstar and the law thereby implies a contract by which Defendants must pay to Rockstar the
22 amount by which, in equity and good conscience, Defendants have been unjustly enriched at the
23 expense of Rockstar.

24 **PRAYER**

25 Wherefore, Plaintiffs pray for:

26 1. Entry of an order and judgment requiring that Rap Star 360 LLC and Eric Barrier and
27 their agents, servants, employees, owners and representatives, and all other persons, firms or
28 corporations in active concert or participation with them, be enjoined and restrained from (a) using

1 in any manner the RAP STAR 360 mark, the RAPSTAR Mark, or any name, mark or domain name
2 that is confusingly similar to or a colorable imitation of the ROCKSTAR Marks, the Rockstar Star
3 Marks, and/or the Rockstar Trade Dress including, without limitation, any trade name and trademark
4 incorporating the term “RAP STAR” or “RAPSTAR”; (b) doing any act or thing calculated or likely
5 to cause confusion or mistake in the minds of members of the public, or prospective customers of
6 Rockstar’s products, as to the source of the products offered for sale, distributed, or sold, or likely to
7 deceive members of the public, or prospective customers, into believing that there is some
8 connection between Rap Star Energy and Rockstar; and (c) committing any acts which will tarnish,
9 blur, or dilute, or likely to tarnish, blur, or dilute the distinctive quality of the well known
10 ROCKSTAR Marks, Rockstar Star Marks, and/or Rockstar Trade Dress;

11 2. A judgment ordering Rap Star 360 LLC and Eric Barrier, pursuant to 15 U.S.C.
12 § 1116(a), to file with this Court and serve upon Rockstar within thirty (30) days after entry of the
13 injunction, a report in writing under oath setting forth in detail the manner and form in which Rap
14 Star 360 LLC and Eric Barrier have complied with the injunction, ceased all manufacture and sales
15 of goods and services under the RAP STAR 360 trade name and RAPSTAR trademark, star logo
16 mark, and trade dress, and as set forth above;

17 3. A judgment ordering Rap Star 360 LLC and Eric Barrier, pursuant to 15 U.S.C.
18 § 1118, to deliver up for destruction, or to show proof of said destruction or sufficient modification
19 to eliminate the infringing matter, all articles, packages, wrappers, products, displays, labels, signs,
20 vehicle displays or signs, circulars, kits, packaging, letterhead, business cards, promotional items,
21 clothing, literature, sales aids, receptacles or other matter in the possession, custody, or under the
22 control of Rap Star 360 LLC and Eric Barrier or their agents bearing the trademark RAP STAR or
23 RAPSTAR in any manner, or any mark that is confusingly similar to or a colorable imitation of the
24 ROCKSTAR Marks, Rockstar Star Marks, and/or Rockstar Trade Dress, including without
25 limitation the RAP STAR trade name and RAPSTAR trademark, both alone and in combination
26 with other words or terms, the Rap Star Star Logo, or Rap Star Trade Dress;

27 4. A judgment ordering Rap Star 360, LLC to take all steps necessary to cancel any
28 trademark application or registration it may have in the U.S., and an order compelling the

1 Commissioner of Trademarks of the United States to cancel federal trademark application Serial No.
2 77/682821;

3 5. A judgment in the amount of Plaintiffs' actual damages, Rap Star 360, LLC's and
4 Eric Barrier's profits, Plaintiffs' reasonable attorneys' fees and costs of suit, and pre-judgment
5 interest pursuant to 15 U.S.C. §1117;

6 6. A judgment for enhanced damages under 15 U.S.C. §1117 and punitive damages
7 under state law as appropriate;

8 7. A judgment granting Plaintiffs such other and further relief as the Court deems just
9 and proper.

10 Dated: February 9, 2010

Respectfully submitted,

11 LEWIS AND ROCA LLP
12

13 By: /s/ _____
14 Michael J. McCue
15 3993 Howard Hughes Parkway, Suite 600
16 Las Vegas, NV 89169

17 Attorneys for Plaintiffs
18 Rockstar, Inc. and
19 Russell G. Weiner
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JURY DEMAND

1
2 Plaintiffs Rockstar, Inc. and Russell G. Weiner hereby demand a jury on all such issues
3 triable before a jury.

4
5 Dated: February 9, 2010

Respectfully submitted,

6 LEWIS AND ROCA LLP

7 By: /s/ _____

8 Michael J. McCue
9 3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

10 Attorneys for Plaintiffs
11 Rockstar, Inc. and
12 Russell G. Weiner

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EXHIBIT A TO COMPLAINT

EXHIBIT A TO COMPLAINT

Int. Cl.: 32

Prior U.S. Cls.: 45, 46, and 48

United States Patent and Trademark Office

Reg. No. 2,613,067

Registered Aug. 27, 2002

**TRADEMARK
PRINCIPAL REGISTER**

ROCKSTAR ENERGY DRINK

**WEINER, RUSSELL G. (UNITED STATES INDIVIDUAL)
8 ROSS ROAD
SAUSALITO, CA 94965**

FOR: SPORTS DRINKS, NAMELY, ENERGY DRINKS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 8-19-1999; IN COMMERCE 1-16-2001.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ENERGY DRINK", APART FROM THE MARK AS SHOWN.

SN 75-760,313, FILED 8-19-1999.

DANIELLE MATTESSICH, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,784,403

United States Patent and Trademark Office

Registered Nov. 18, 2003

**TRADEMARK
PRINCIPAL REGISTER**

ROCKSTAR

**WEINER, RUSSELL G. (UNITED STATES INDIVIDUAL)
P.O. BOX 27740
LAS VEGAS, NV 89126**

OWNER OF U.S. REG. NOS. 2,545,247 AND 2,613,067.

FOR: SPORTS DRINKS, NAMELY, ENERGY DRINKS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

SER. NO. 78-194,527, FILED 12-13-2002.

FIRST USE 1-8-1999; IN COMMERCE 1-8-2000.

VERNA BETH RIRIE, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46, and 48

United States Patent and Trademark Office

Reg. No. 2,545,247

Registered Mar. 5, 2002

**TRADEMARK
PRINCIPAL REGISTER**

PARTY LIKE A ROCKSTAR

**WEINER, RUSSELL G. (UNITED STATES CITI-
ZEN)
8 ROSS ROAD
SAUSALITO, CA 94965**

FIRST USE 8-19-1999; IN COMMERCE 1-8-2001.

SN 75-950,418, FILED 2-29-2000.

**FOR: SPORTS DRINKS, NAMELY, ENERGY
DRINKS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).**

RONALD MCMORROW, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46, and 48

United States Patent and Trademark Office

Reg. No. 3,190,229

Registered Dec. 26, 2006

**TRADEMARK
PRINCIPAL REGISTER**

ROCKSTAR JUICED

WEINER, RUSSELL G. (UNITED STATES INDIVIDUAL)

P.O. BOX 27740

101 CONVENTION CENTER DRIVE, SUITE 777

LAS VEGAS, NV 89126

FOR: SPORTS DRINKS, NAMELY, ENERGY DRINKS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 2-1-2006; IN COMMERCE 2-1-2006.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,545,247, 2,613,067, AND 2,784,403.

SN 78-773,699, FILED 12-14-2005.

COLLEEN KEARNEY, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

United States Patent and Trademark Office

Reg. No. 3,398,516

Registered Mar. 18, 2008

**TRADEMARK
PRINCIPAL REGISTER**

ROCKSTAR

WEINER, RUSSELL G. (UNITED STATES INDIVIDUAL)

P.O. BOX 27740

101 CONVENTION CENTER DRIVE, SUITE 777

LAS VEGAS, NV 89126

FOR: SPORTS DRINKS, NAMELY, ENERGY DRINKS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 8-19-1999; IN COMMERCE 8-19-1999.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,545,247, 2,613,067, AND 2,784,403.

SER. NO. 78-862,808, FILED 4-17-2006.

CHRISTOPHER BUONGIORNO, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46, and 48

United States Patent and Trademark Office

Reg. No. 3,423,897

Registered May 6, 2008

**TRADEMARK
PRINCIPAL REGISTER**

ROCKSTAR ROASTED

WEINER, RUSSELL G. (UNITED STATES INDIVIDUAL)

101 CONVENTION CENTER DRIVE

LAS VEGAS, NV 89126

FOR: ENERGY DRINKS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 12-15-2007; IN COMMERCE 12-15-2007.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,545,247, 2,784,403, AND OTHERS.

SN 77-187,005, FILED 5-22-2007.

SALLY SHIH, EXAMINING ATTORNEY

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

United States Patent and Trademark Office

Reg. No. 3,508,269

Registered Sep. 30, 2008

**TRADEMARK
PRINCIPAL REGISTER**

ROCKSTAR PUNCHED

WEINER, RUSSELL G. (UNITED STATES INDIVIDUAL)
SUITE 777
101 CONVENTION CENTER DRIVE
LAS VEGAS, NV 89126

FOR: ENERGY DRINKS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 9-15-2007; IN COMMERCE 9-15-2007.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-407,780, FILED 2-27-2008.

NORA BUCHANAN WILL, EXAMINING ATTORNEY