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7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10
11
12 STRATOSPHERE GAMING, LLC
13 a Nevada limited liability company,

COMPLAINT

14 Plaintiff,

15 v.

16
17 ADVENTECH, LLC, a Kentucky limited
18 liability company,

19 Defendant.

20
21 Plaintiff Stratosphere Gaming LLC, for its complaint against Defendant Adventech,
22 LLC, alleges as follows:

23 **NATURE OF THE CASE**

24 Plaintiff seeks a declaratory judgment that its use of the SKY JUMP LAS VEGAS
25 and SKY JUMP STRATOSPHERE LAS VEGAS mark for a base jumping attraction at
26 the Stratosphere Las Vegas does not infringe or other otherwise violate Defendant's
27 alleged common law rights in the SKYJUMP mark for use in connection with a
28 trampoline.

JURISDICTION

1
2 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
3 1338(a). Jurisdiction is also proper under 28 U.S.C. §1332(a), because there is complete
4 diversity of citizenship between the parties and the amount in controversy in this action
5 exceeds \$75,000, exclusive of costs and interest.

6 2. Plaintiff Stratosphere Gaming, LLC (“Stratosphere Gaming”) is a Nevada
7 limited liability company formed under the laws of the State of Nevada with its principal
8 place of business in Las Vegas, Nevada. Stratosphere Gaming owns and operates the
9 Stratosphere, a resort hotel and casino on the Las Vegas Strip.

10 3. Upon information and belief, Defendant Adventech is a limited liability
11 company formed under the laws of the State of Kentucky with its principal place of
12 business in New York, New York.

13 4. This Court has specific jurisdiction over Adventech based on the facts that:
14 (1) Adventech expressly aimed its tortious conduct at Stratosphere Gaming in the State of
15 Nevada knowing that such conduct would cause injury to Stratosphere Gaming in the State
16 of Nevada; and (2) Adventech operates an interactive web site accessible by residents of
17 the State of Nevada. Plaintiff’s claims arise out of Adventech’s contacts with the State of
18 Nevada.

19 5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b). Venue lies
20 in the unofficial Southern division of this Court.

FACTUAL ALLEGATIONS

21
22 6. Since December 8, 2001, Jump Technics Limited, a New Zealand company
23 (“Jump Technics NZ”), has owned and operated the “SKYJUMP” ride, one of New
24 Zealand’s most thrilling tourist attractions. The attraction involves leaping off of
25 Auckland’s famous Sky Tower, 192 meters straight down, secured by a tether.

26 7. Jump Technics NZ’s SKYJUMP ride has received worldwide media
27 coverage. For example, in the United States, Jump Technics NZ’s SKYJUMP ride has
28 been featured on “The David Letterman Show” and “The Tonight Show with Conan

1 O'Brien" as well as in newspapers, such as *The New York Times*, *Boston Herald*, and the
2 *San Francisco Chronicle*. Jump Technics NZ's SKYJUMP ride has been featured in travel
3 guides and other programs throughout the world. As the result of widespread media
4 coverage in the United States and throughout the world, Jump Technics NZ's SKYJUMP
5 mark has acquired fame in the United States. Upon information and belief, Jump Technic's
6 NZ's SKYJUMP mark acquired fame prior to Adventech's adoption of the SKYJUMP
7 mark for trampolines.

8 8. Upon information and belief, Jump Technic NZ assigned all of its right, title
9 and interest in and to the SKYJUMP mark in the United States to Jump Technics LV
10 Limited, a New Zealand company ("Jump Technics LV").

11 9. The Stratosphere hotel and casino in Las Vegas features a tower that is 1,149
12 feet high. It is the tallest observation tower in the United States. The Stratosphere features
13 several thrill rides on top of the Stratosphere Tower, including the Big Shot (which shoots
14 passengers straight up 160 feet at 45 miles per hour), X-SCREAM (a large teeter-totter that
15 propels passengers over the edge of the Stratosphere Tower, 866 feet above the ground),
16 and INSANITY (a massive mechanical arm extending out 64 feet over the edge of the
17 Stratosphere Tower at a height of over 900 feet that spins passengers in the open air at
18 speeds of up to 3 Gs up to an angle of 70 degrees).

19 10. On October 22, 2009, Jump Technics LV entered into an agreement with
20 Stratosphere Gaming for the sale and installation of the SKYJUMP ride on the
21 Stratosphere Tower. In the purchase agreement, Jump Technics LV granted an exclusive
22 license to Stratosphere Gaming for the use of the SKYJUMP mark in association with the
23 advertisement, promotion, marketing, operation and use of the ride. Jump Technics LV
24 and Stratosphere Gaming also agreed that all composite and derivative marks created or
25 used in connection with the ride, including, without limitation, SKYJUMP
26 STRATOSPHERE and SKYJUMP STRATOSPHERE LAS VEGAS, would be owned by
27 Stratosphere. Jump Technics LV has since assigned its rights in the SKYJUMP mark in the
28 United States to Stratosphere Gaming.

1 11. On January 8, 2010, Stratosphere Gaming announced plans to add Jump
2 Technic NZ's ride to the Stratosphere Tower. Stratosphere Gaming's press release stated,
3 in part:

4 What will undoubtedly become one of the top tourist attractions in North
5 America, the skyjump is best described as a 'controlled freefall.' Lucky
6 adrenaline junkies and average Joes alike, will have the opportunity to
7 plummet 855 feet at a scream-inducing speed of up to 40 mph - all while
8 enjoying breathtaking views of the world famous Las Vegas Strip ... if they
9 can bear to keep their eyes open. *SkyJump Las Vegas* will offer a way to
experience thrills similar to skydiving and base jumping - with the added
benefit of doing it over the Las Vegas Strip - day or night. The attraction is
expected to open April of 2010, and will join three thrill rides already atop
the tower: Big Shot, X-Scream and Insanity.

10 12. On February 9, 2010, Stratosphere Gaming filed six (6) trademark
11 applications with the United States Patent and Trademark Office for SKY JUMP
12 STRATOSPHERE LAS VEGAS and Design (shown below) in: (a) Class 9 for "Digital
13 media, namely, CDs and DVDs featuring souvenir pictures and videos; Magnetic coded
14 gift cards; Magnetic identifying cards; Magnets; Mousepads; Slot machines; Sunglasses";
15 (b) Class 16 for "Bookmarks; Calendars; Children's activity books; Coupons; Gift cards;
16 Greeting cards; Photographs; Pictures; Postcards; Posters; Printed tickets; Stationery;
17 Stickers; Writing instruments"; (c) Class 21 for "Beverageware; Bottle openers; Coasters
18 not of paper and not being table linen; Containers for household or kitchen use; Figurines
19 of glass and ceramic; Flasks; Plastic water bottles sold empty; Plates; Shot glasses"; (d)
20 Class 25 for "Bottoms; Footwear; Headwear; Loungewear; Scarves; Sleepwear;
21 Swimwear; Tops; Undergarments"; (e) Class 35 for "Customer loyalty services and
22 customer club services, for commercial, promotional and/or advertising purposes; Retail
23 gift shops"; and (f) Class 41 for "Entertainment in the nature of an amusement park ride;
24 and Entertainment services, namely, conducting parties." Stratosphere Gaming's logo
25 appears as follows:



1 13. On March 22, 2010, Adventech sent an email to Jump Technics NZ
2 expressing concern over its use of the SKY JUMP mark at the Stratosphere. Adventech
3 claimed that it has been using the SKYJUMP mark in association with a bungee
4 trampoline in the United States for the past six (6) years and therefore it has superior rights
5 over Jump Technics NZ and Stratosphere Gaming. Adventech is using the SKY JUMP
6 logo shown below:



10 14. On March 30, 2010, Adventech informed Stratosphere Gaming's counsel
11 that Adventech owns superior rights to the SKY JUMP mark in Las Vegas, even though
12 Adventech does not own any federal or state trademark registrations for the mark.
13 Adventech conveyed its objection to Stratosphere Gaming's use of the SKYJUMP mark in
14 Las Vegas.

15 15. On April 5, 2010, Adventech sent Stratosphere Gaming's counsel a demand
16 for \$350,000 for a perpetual license to use the SKYJUMP mark in Las Vegas or \$100,000
17 for a five (5) year license to use the SKYJUMP mark.

18 16. On April 23, 2010, Adventech sent Stratosphere Gaming's counsel an email
19 stating that "I believe we have a serious problem now as the sky jump attraction is being
20 called "SKY JUMP" and "I am putting you on legal notice that [Stratosphere Gaming]
21 must cease and desist use of the Sky Jump name and logo by Monday, April 26th at 5pm
22 est."

23 17. Upon information and belief, Adventech has not used or made sufficient use
24 of the SKY JUMP mark in commerce in Las Vegas to establish common law rights in the
25 SKY JUMP mark in Las Vegas.

26 18. Upon information and belief, Adventech adopted the SKY JUMP mark in
27 bad faith with full knowledge of Jump Technic NZ's famous SKYJUMP mark.

1 19. Upon information and belief, Adventech's use of the SKY JUMP mark is
2 descriptive because it is used in connection with a trampoline on which users jump towards
3 the sky. Upon information and belief, Adventech has not acquired secondary meaning in
4 the SKY JUMP mark.

5 20. Upon information and belief, Adventech has falsely represented to
6 Stratosphere Gaming that it owns trademark rights in the SKY JUMP mark in Las Vegas,
7 Nevada. Upon information and belief, Adventech made its representations with the intent
8 to induce Stratosphere Gaming to pay Adventech hundreds of thousands of dollars in
9 licensing fees to Adventech. In reasonable reliance on Adventech's false representations,
10 Stratosphere Gaming incurred legal fees and other costs.

11 21. Upon information and belief, Stratosphere Gaming's use of the SKY JUMP
12 formative marks for a thrill ride on the Stratosphere Tower in Las Vegas is not likely to
13 cause confusion among consumers as to the source or origin of Adventech's products, as to
14 an affiliation, relationship or connection between Stratosphere Gaming and Adventech, or
15 as to Stratosphere Gaming's sponsorship or approval of Stratosphere Gaming's products or
16 services.

17
18 **COUNT I**
(Declaratory Judgment
under 28 U.S.C. § 2201)

19 22. Plaintiff incorporates the allegations set forth in each of the preceding
20 paragraphs as if fully set forth herein.

21 23. An actual case and controversy exists between Plaintiff Stratosphere Gaming
22 and Defendant Adventech.

23 24. This controversy is ripe for adjudication.

24
25 **COUNT II**
(Misrepresentation)

26 25. Plaintiff incorporates the allegations set forth in each of the preceding
27 paragraphs as if fully set forth herein.

1 26. Defendant Adventech intentionally made false representations of material
2 fact to Plaintiff Stratosphere Gaming in an effort to extort payment of exorbitant licensing
3 fees.

4 27. Defendant Adventech made these false representations without a valid or
5 substantial basis.

6 28. As the direct and proximate result of Defendant Adventech's
7 misrepresentations, Plaintiff Stratosphere Gaming has suffered damages.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff Stratosphere Gaming respectfully requests that the Court:

10 A. Enter a declaratory judgment that:

11 (1) Plaintiff Stratosphere Gaming is the superior owner of the SKYJUMP
12 mark for a base jumping thrill ride in the United States.

13 (2) Defendant Adventech has not acquired any trademark rights in the
14 SKY JUMP mark, because it is using the mark in a descriptive fashion
15 for a bungee trampoline and it has not acquired secondary meaning;

16 (3) If Defendant Adventech has acquired trademark rights to the SKY
17 JUMP mark, such rights do not extend to Las Vegas, Nevada; and

18 (4) If Defendant Adventech has acquired trademark rights to the SKY
19 JUMP mark and if such rights extend to Las Vegas, Nevada, Plaintiff
20 Stratosphere Gaming has not infringed or otherwise violated
21 Defendant Adventech's rights.

22 B. Award damages to Plaintiff Stratosphere Gaming in an amount to be proven
23 at trial.

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1 C. Grant such other and further relief as the Court deems proper and just.

2 DATED this 26th day of April, 2010.

3 LEWIS AND ROCA LLP

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