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JOHN T. LAMONT and

PRESTON POULTER

Plaintiffs

vs.

ETHAN VAN SCIVER; JOHN DOES

AND XYZ CORPS 1-10 (said names:

being persons, and/or entities which

are fictitious and presently unknown)

Defendants

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION

BURLINGTON COUNTY

CIVIL ACTION

DOCKET NO. BUR-L-000689-22

**ANSWER WITH SEPARATE
DEFENSES AND COUNTERCLAIMS
OF DEFENDANT, ETHAN VAN
SCIVER TO COMPLAINT WITH
DESIGNATION OF TRIAL COUNSEL
RULE 4:5-1 CERTIFICATION, DEMAND
FOR STATEMENT OF DAMAGES, AND
DEMAND FOR DOCUMENTS**

ANSWER

Defendant, Ethan Van Sciver, by way of Answer to the Complaint filed by Plaintiffs, John T. Lamont and Preston Poulter, in the above-captioned civil action, hereby replies as follows:

PARTIES & VENUE

1. Defendant, Ethan Van Sciver (referred to herein as the "Defendant" or "Van Sciver"), has insufficient knowledge or information upon which to form a belief as to and therefore denies the allegations in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded at trial.

2. Defendant has insufficient knowledge or information upon which to form a belief as to and therefore denies the allegations in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

3. Admitted.

4. Admitted.

5. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

FACTUAL BACKGROUND

1. Defendant repeats its responses to the allegations in the Parties & Venue section above as if set forth fully herein.

2. Admitted.

3. Denied in part, Admitted in part. Defendant admits he owns the sole U.S. registered trademark for the mark "Comics Gate" [registered with the United States Patent and Trademark Office (the "PTO") in International Class 16 (Comics)] and also, in accordance with 15 U.S.C. §1125(a), Defendant has protection of his common law mark of ComicsGate that is the true and original origin of goods and services bearing the ComicsGate mark. Defendant admits Plaintiff Poulter has filed both a Cancellation Proceeding with the Trademark Trial and Appeal Board and a Petition for Re-examination with the PTO Examination Corps. Defendant denies the remainder of Plaintiffs' allegations in this paragraph of the Complaint. Per the records of the PTO, Common Sense Press Inc. and not Plaintiff Preston Poulter (referred to individually herein as "Poulter") filed applications with the PTO alleging an interest in the word Comicsgate, but each such application was on an intent to use basis and each such application is currently in litigation before the PTO. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

4. Denied in part, Admitted in part. Defendant admits he participated in a livestream broadcast April 25, 2021 on the YouTube channel VikkiVerse entitled “ComicsGate Dumping Ground: D-E-Dlive,” and that the indented text is an accurate transcript of a portion of that livestream discussion but denies that the indented text represents the entire relevant context and denies the remainder of the allegation.

5. Denied. Strict proof of Plaintiffs’ allegations is therefore demanded.at trial.

6. Denied. Strict proof of Plaintiffs’ allegations is therefore demanded.at trial.

7. Denied and further denied that Plaintiff, John T. Lamont (referred to individually herein as “Lamont”) was identified or referenced by name in any way during the foregoing livestream broadcast of April 25, 2021. Strict proof of Plaintiffs’ allegations is therefore demanded.at trial.

8. Admitted.

9. Admitted the Plaintiffs have filed this suit before this Honorable Court, but it is denied that said lawsuit is meritorious and that Plaintiffs’ allegations as denied herein are accurate. Strict proof of Plaintiffs’ allegations, as denied herein, is therefore demanded.at trial.

Preston Poulter

10. Denied. Strict proof of Plaintiffs’ allegations is therefore demanded.at trial.

11. Denied. Strict proof of Plaintiffs’ allegations is therefore demanded.at trial.

12. Denied. Strict proof of Plaintiffs’ allegations is therefore demanded.at trial.

13. Defendant has insufficient knowledge or information upon which to form a belief as to and therefore denies the allegations in this paragraph of the Complaint. Strict proof of Plaintiffs’ allegations is therefore demanded.at trial.

14. Denied. Defendant has insufficient knowledge or information upon which to form a belief as to and therefore denies the allegations in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

15. Defendant has insufficient knowledge or information upon which to form a belief as to and therefore denies the allegations in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

16. Defendant has insufficient knowledge or information upon which to form a belief as to and therefore denies the allegations in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

17. Defendant has insufficient knowledge or information upon which to form a belief as to and therefore denies the allegations in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

18. Defendant has insufficient knowledge or information upon which to form a belief as to and therefore denies the allegations in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

John Lamont

19. Defendant has insufficient knowledge or information upon which to form a belief as to and therefore denies the allegations in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

20. Defendant has insufficient knowledge or information upon which to form a belief as to and therefore denies the allegations in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

21. Defendant has insufficient knowledge or information upon which to form a belief as to and therefore denies the allegations in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

22. Defendant has insufficient knowledge or information upon which to form a belief as to and therefore denies the allegations in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

23. Defendant has insufficient knowledge or information upon which to form a belief as to and therefore denies the allegations in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

24. Defendant has insufficient knowledge or information upon which to form a belief as to and therefore denies the allegations in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

25. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

26. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

27. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

Alleged Punitive Damages

28. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

29. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

30. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

31. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

32. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

Allegations of Defamation Per Se

33. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

34. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

35. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

36. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

Allegations of Publication

37. Denied in part, Admitted in part. Defendant admits his statements were made during a livestream broadcast over the internet but denies the remaining allegations made in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

38. Denied in part, Admitted in part. Defendant admits his statements were livestreamed on April 25, 2021 but is without sufficient information about the allegation of statements "published . . . repeatedly" and therefore denies this allegation and the remaining allegations made in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

Allegations Regarding Statements

39. Denied and further denied that Lamont was identified or referenced by name in any way during the foregoing livestream broadcast of April 25, 2021. Strict proof of Plaintiffs' allegations is therefore demanded.at trial..

40. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

41. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

42. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

43. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

Allegations Regarding Plaintiffs' Reputations

44. Defendant Denies that Plaintiff Poulter's reputation prior to the foregoing livestream broadcast was good. Defendant has insufficient knowledge or information upon which to form a belief

as to and therefore denies the remaining allegations in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

45. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
46. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
47. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
48. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
49. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
50. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

FIRST COUNT
Unlawful Interference with Prospective Economic Advantage

1. Defendant repeats and revers his responses to the prior allegations and paragraphs contained above as if set forth fully herein.
2. Denied. Defendant has insufficient knowledge or information upon which to form a belief as to and therefore denies the allegations in this paragraph of the Complaint. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
3. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
4. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
5. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
6. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

WHEREFORE, Defendant respectfully requests that this Honorable Court dismiss this Count of Plaintiffs' Complaint with prejudice, and grant Defendant such other and proper relief as this Honorable Court deems just or proper.

SECOND COUNT
Business Slander

1. Defendant repeats and reavers his responses to the prior allegations and paragraphs contained above as if set forth fully herein.
2. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
- 3.. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
4. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

5. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
6. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
7. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
8. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

WHEREFORE, Defendant respectfully requests that this Honorable Court dismiss this Count of Plaintiffs' Complaint with prejudice, and grant Defendant such other and proper relief as this Honorable Court deems just or proper.

THIRD COUNT
Defamation

1. Defendant repeats and reavers his responses to the prior allegations and paragraphs contained above as if set forth fully herein.
2. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
3. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
4. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
5. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
6. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
7. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
8. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

9. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

WHEREFORE, Defendant respectfully requests that this Honorable Court dismiss this Count of Plaintiffs' Complaint with prejudice, and grant Defendant such other and proper relief as this Honorable Court deems just or proper.

FOURTH COUNT
False Light

10. Defendant repeats and reavers his responses to the prior allegations and paragraphs contained above as if set forth fully herein.

11. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

12. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

13. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

14. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

WHEREFORE, Defendant respectfully requests that this Honorable Court dismiss this Count of Plaintiffs' Complaint with prejudice, and grant Defendant such other and proper relief as this Honorable Court deems just or proper.

FIFTH COUNT
Intentional Fraud and Misrepresentation

1. Defendant repeats and reavers his responses to the prior allegations and paragraphs contained above as if set forth fully herein.

2. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

3. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

4. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

5. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

WHEREFORE, Defendant respectfully requests that this Honorable Court dismiss this Count of Plaintiffs' Complaint with prejudice, and grant Defendant such other and proper relief as this Honorable Court deems just or proper.

SIXTH COUNT
Defamation Per Se

1. Defendant repeats and reavers his responses to the prior allegations and paragraphs contained above as if set forth fully herein.
2. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
3. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

WHEREFORE, Defendant respectfully requests that this Honorable Court dismiss this Count of Plaintiffs' Complaint with prejudice, and grant Defendant such other and proper relief as this Honorable Court deems just or proper.

SEVENTH COUNT
Slander with Actual Malice

1. Defendant repeats and reavers his responses to the prior allegations and paragraphs contained above as if set forth fully herein.
2. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
3. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
4. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

WHEREFORE, Defendant respectfully requests that this Honorable Court dismiss this Count of Plaintiffs' Complaint with prejudice, and grant Defendant such other and proper relief as this Honorable Court deems just or proper.

EIGHTH COUNT
Libel with Actual Malice

5. Defendant repeats and reavers his responses to the prior allegations and paragraphs contained above as if set forth fully herein.
6. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
7. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
8. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

WHEREFORE, Defendant respectfully requests that this Honorable Court dismiss this Count of Plaintiffs' Complaint with prejudice, and grant Defendant such other and proper relief as this Honorable Court deems just or proper.

NINTH COUNT
Negligent Slander

1. Defendant repeats and reavers his responses to the prior allegations and paragraphs contained above as if set forth fully herein.
2. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
3. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
4. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

WHEREFORE, Defendant respectfully requests that this Honorable Court dismiss this Count of Plaintiffs' Complaint with prejudice, and grant Defendant such other and proper relief as this Honorable Court deems just or proper.

TENTH COUNT
Negligent Libel

1. Defendant repeats and revers his responses to the prior allegations and paragraphs contained above as if set forth fully herein.
2. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

3. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
4. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

WHEREFORE, Defendant respectfully requests that this Honorable Court dismiss this Count of Plaintiffs' Complaint with prejudice, and grant Defendant such other and proper relief as this Honorable Court deems just or proper.

ELEVENTH COUNT
Intentional Infliction of Emotional Distress

This Count of the Complaint was dismissed without prejudice by Order of this Honorable Court with Plaintiffs having fourteen days thereafter to amend their Complaint as to this Count. Plaintiffs having not done so within said fourteen day period, have waived the right to so amend this Count of the Complaint and this Count is dismissed without need for Defendant to respond to the Plaintiffs' allegations herein.

TWELFTH COUNT
Negligent Infliction of Emotional Distress

1. Defendant repeats its and revers his responses to the prior allegations and paragraphs contained above as if set forth fully herein.
2. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
3. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
4. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.
5. Denied. Strict proof of Plaintiffs' allegations is therefore demanded.at trial.

WHEREFORE, Defendant respectfully requests that this Honorable Court dismiss this Count of Plaintiffs' Complaint with prejudice, and grant Defendant such other and proper relief as this Honorable Court deems just or proper.

THIRTEENTH COUNT
Negligent Hiring/Supervision/Training

This Count of the Complaint was dismissed with prejudice by Order of this Honorable Court. Thus, there is no need for Defendant to respond to the Plaintiffs' allegations herein.

AFFIRMATIVE DEFENSES

By and for his separate/affirmative defenses, Defendant Van Sciver states:

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims and the remedies sought thereunder are barred in whole or in part by the failure to state claims upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims and the remedies sought thereunder are barred in whole or in part by the doctrine of waiver.

THIRD AFFIRMATIVE DEFENSE

The claims of Poulter and the remedies sought thereunder by him are barred in whole or in part because Poulter is defamation proof. Plaintiff's reputation is already sullied such that any alleged falsehoods do no incremental damage to his reputation and thus do not injure the only interest that defamation law protects.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and the remedies sought thereunder are barred in whole or in part as Plaintiffs are public or limited purpose public figures and because Defendant's comments were made as statements of opinions and were made with no actual malice, and thus constitutionally protected speech.

WHEREFORE, Defendant respectfully requests that this Honorable Court dismiss Plaintiffs' Complaint with prejudice, and grant Defendant such other and proper relief as this Honorable Court deems just or proper.

COUNTERCLAIMS

1. This is an action for: Malicious Use Of Process, Trademark Counterfeiting, Trademark Infringement and False Designation of Origin.
2. Jurisdiction of the Court is based upon Rule 4:7-1 and on the concurrent jurisdiction of state and federal courts over cases arising under the Federal Lanham Trademark Act. 28 U.S.C.A § 1338(a); J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, § 32:1 at 32-11 (5th ed., Sep. 2022 update) (“[I]n cases arising under the Federal Lanham Trademark Act, the jurisdiction of state and federal courts is concurrent).

FACTUAL BACKGROUND

3. Defendant-Counterclaim Plaintiff Ethan Van Sciver is the sole owner of the trademark COMICSGATE. He owns U.S. Registration No. 6102744 for the mark used on comic books, and he owns rights under 15 U.S.C. § 1125(a) (the so called “common law” trademark) to exclusive use of the mark in connection with services such as crowdfunding of independent comic book projects.

4. Plaintiff-Counterclaim Defendant Preston Poulter (“Poulter”), in the name of his company Common Sense Press Inc. DBA Pocket Jacks Comics, applied for two trademark applications, Ser. Nos. 88/872,841 and 88/925,542, for the mark COMICSGATE.

5. Poulter knew that the mark COMICSGATE was used in commerce by others in the comic book industry before Poulter filed his two trademark applications, Ser. Nos. Nos. 88/872,841 and 88/925,542.

6. Specifically, Poulter knew Defendant-Counterclaim Plaintiff Van Sciver used the mark COMICSGATE in commerce, for example, by hosting internet YouTube livestream broadcasts to promote crowdfunding of certain independent comic book creators.

7. Van Sciver refused to allow Poulter to appear on Van Sciver's livestream after which Poulter felt animus toward Van Sciver.

8. As a result of this animus Poulter began a series of YouTube livestreams and made statements in social media in which he criticized the COMICSGATE group of independent comic book creators and Van Sciver.

9. Poulter has stated, "I am working for the destruction of #Comicsgate."

10. Poulter has stated on social media, "I've been quite vocal in my opinions about Comicsgate as a hate group."

11. Poulter has commented on social media about, "Ethan Van Sciver as the sociopathic leader of a hate movement, and the horrible people who follow him."

12. Poulter's animus against Van Sciver greatly increased after a fan of the Comicsgate group discovered and drew attention to several pornographic videos featuring Poulter which, in a previous period of his life, Poulter had placed on the internet.

13. Poulter blamed Van Sciver personally for the uncovering of these pornographic videos and filed at least one police report attempting to have Van Sciver arrested, claiming, somehow, the uncovering of Poulter's publicly available video meant Van Sciver had committed a crime.

14. Poulter had produced comic books and other products under the mark “Pocket Jacks” using the logo shown below:



15. After his humiliation, Poulter altered his logo to infringe on Van Sciver's COMICGATE trademark, shown below:



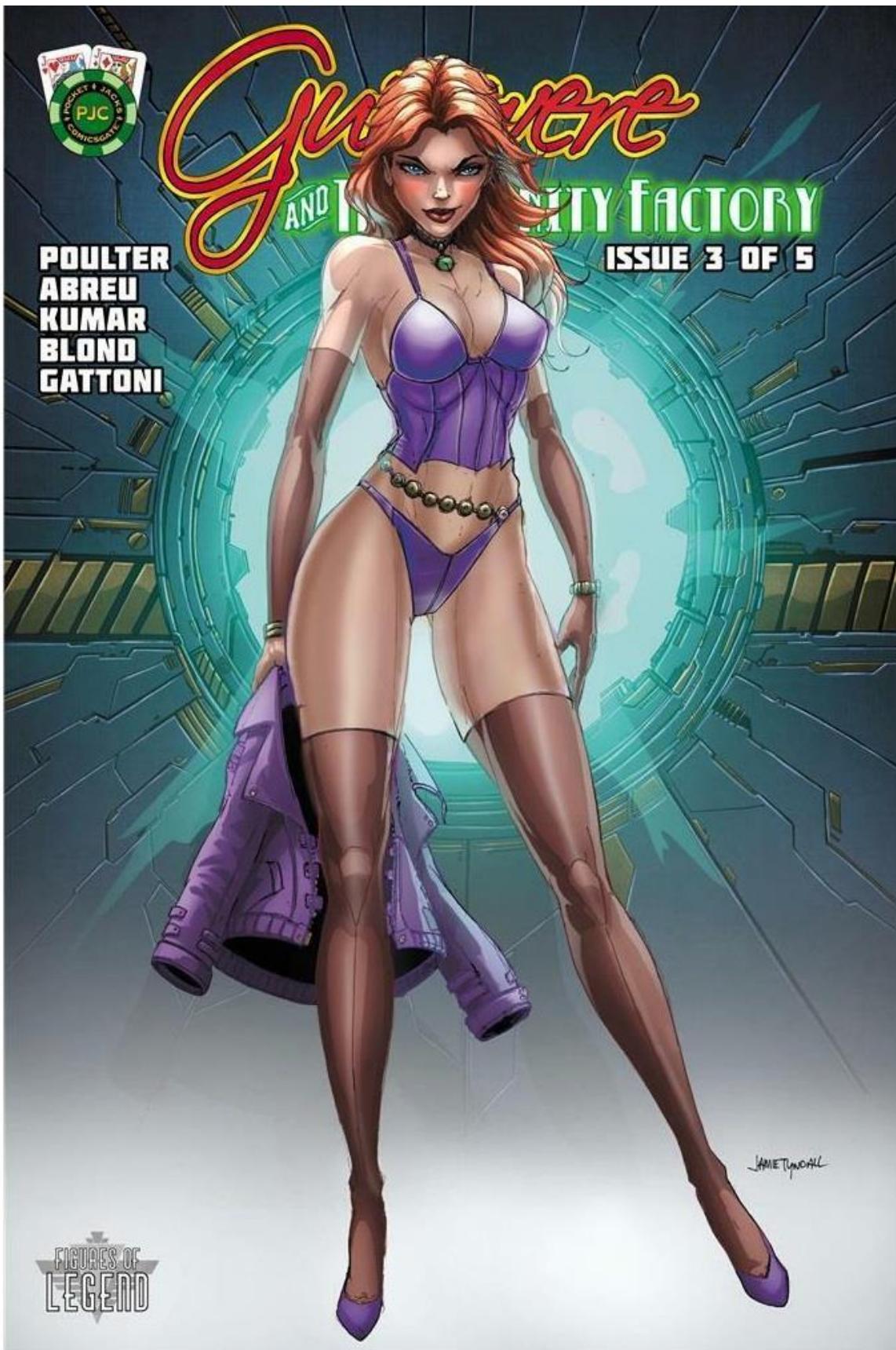
16. Poulter has announced that the federal government granted him ownership of the trademark COMICSGATE.

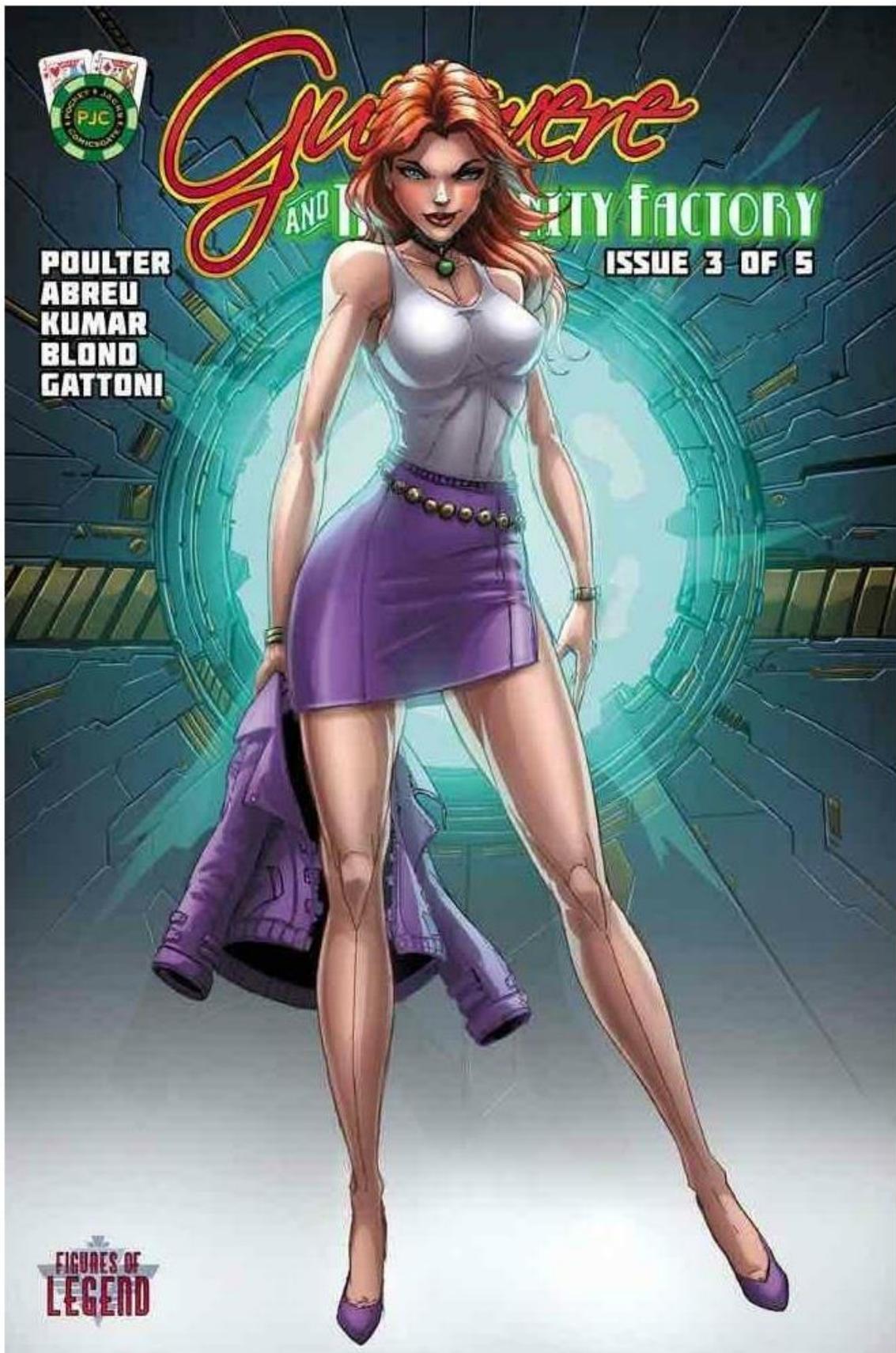
17. Poulter knows that the federal government has not granted him ownership of the trademark COMICSGATE.

18. Poulter is now engaged in a massive program of unauthorized commercial use of Van Sciver's trademark as illustrated by the following fifteen (15) infringing products, each of which use the unauthorized COMICSGATE logo from the paragraph above, as shown on the following pages:



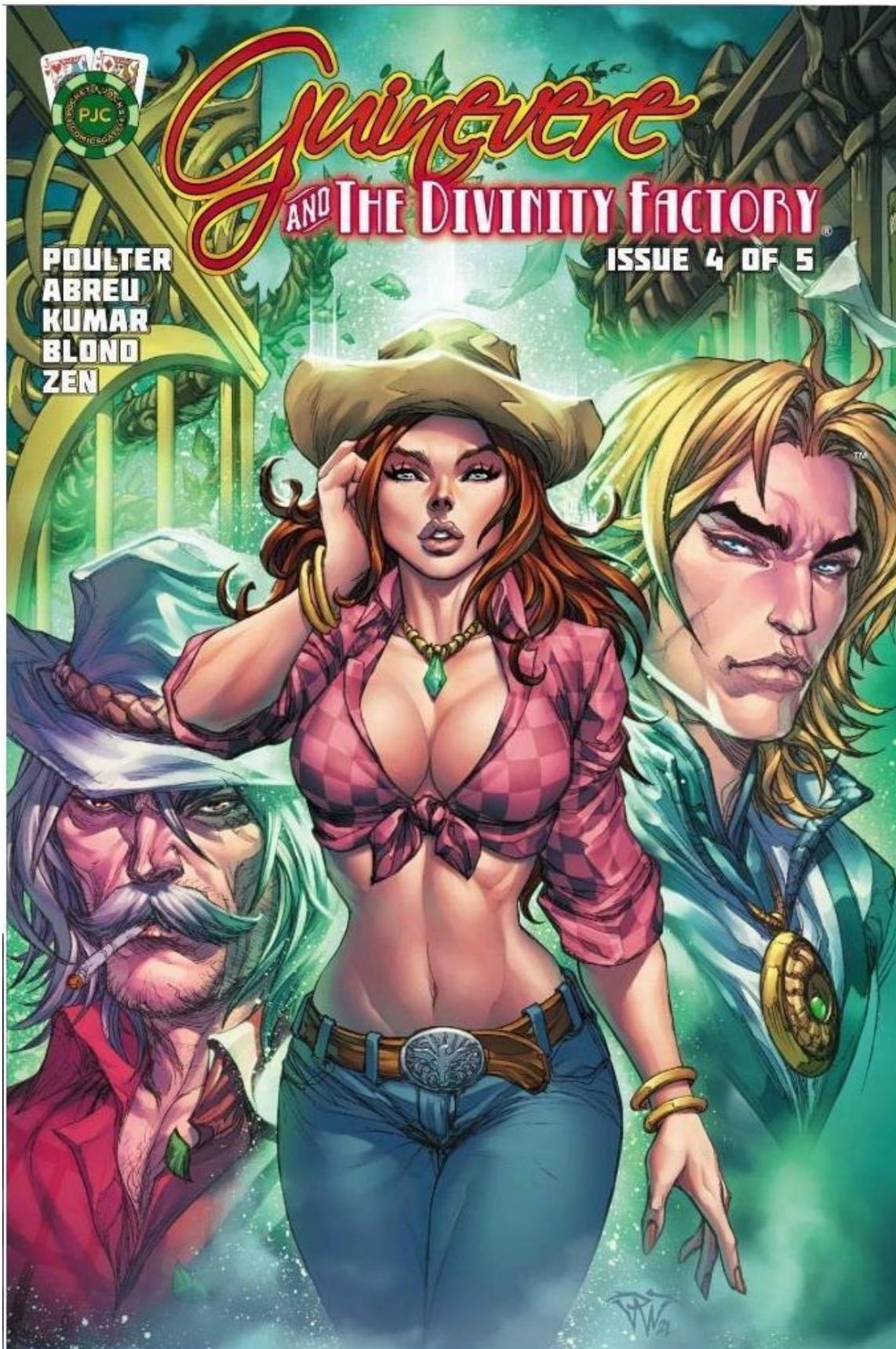


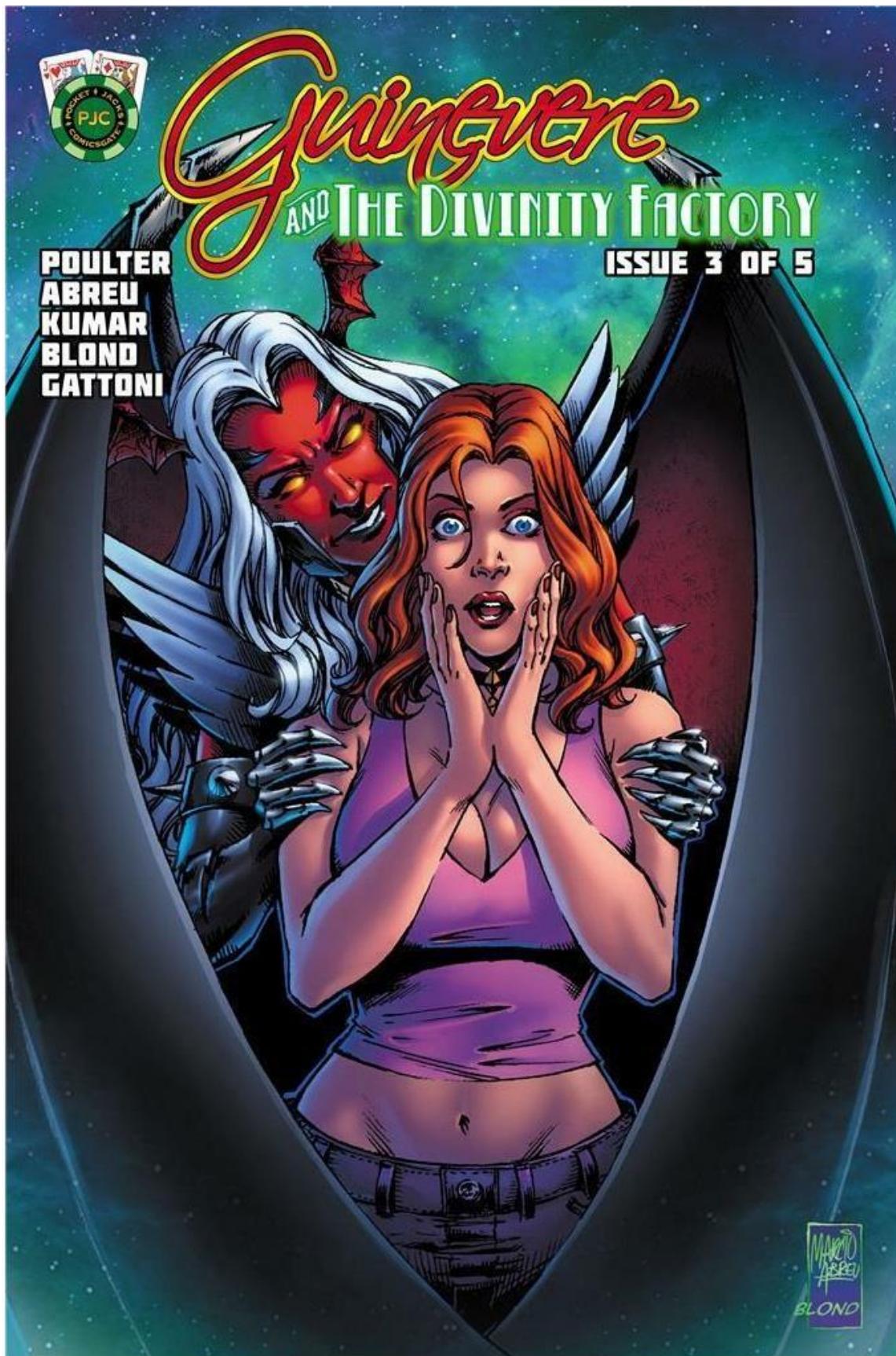








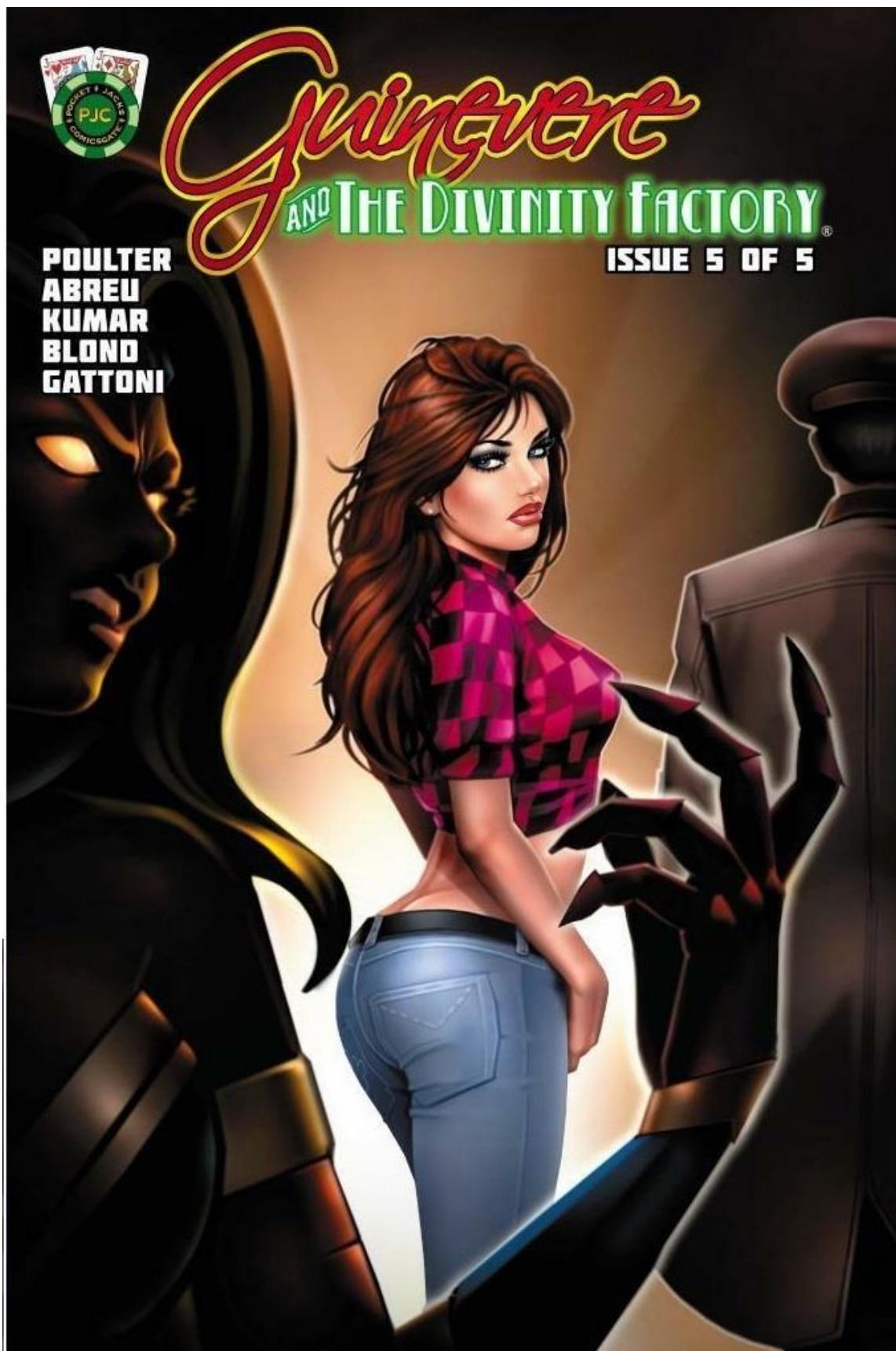












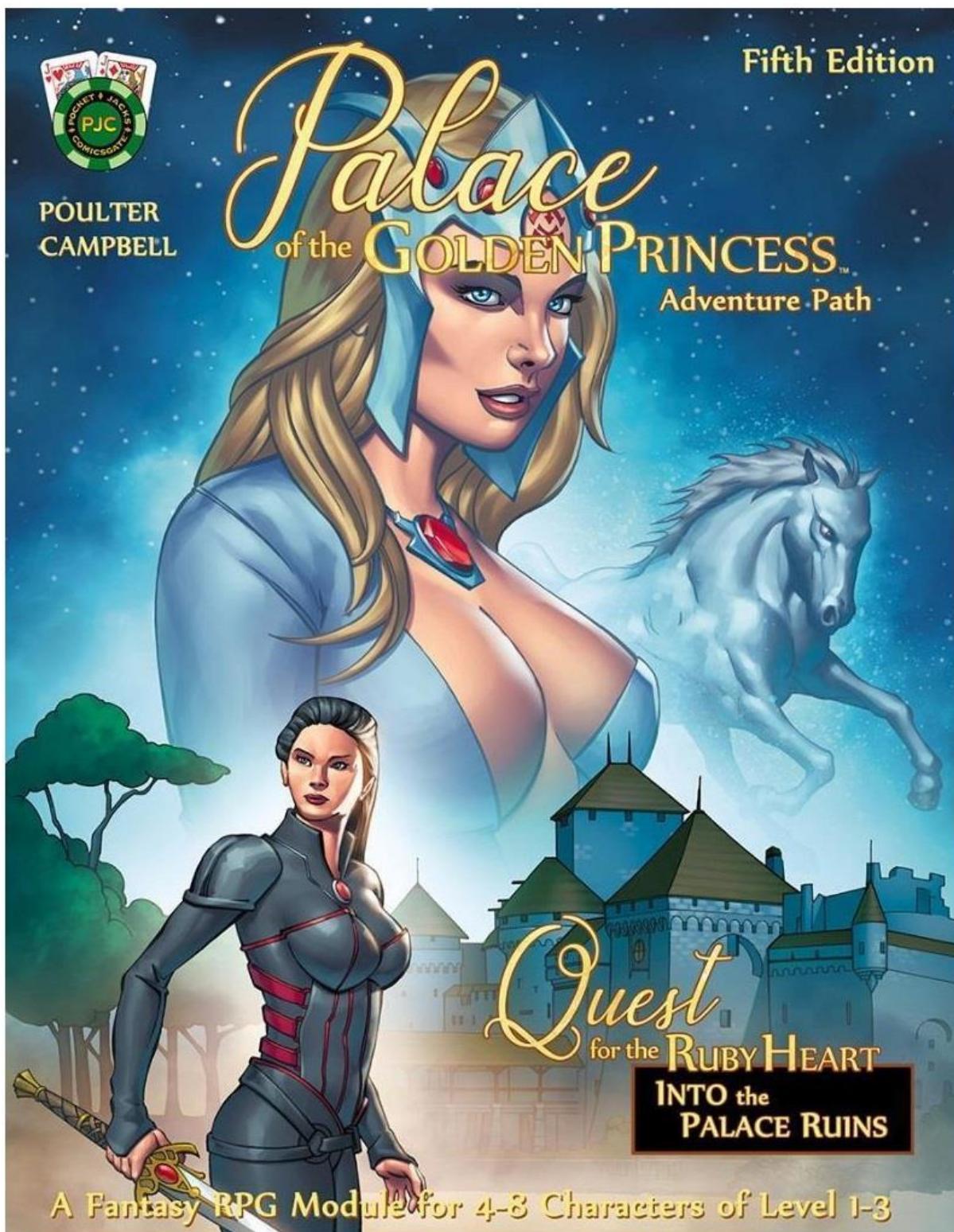






DIRECT SALES
\$5.00
00541
6 88338 09977 4

19. Poulter is using the mark COMICSGATE in the following manor identical to, or confusingly similar to, the uses authorized by Van Sciver.









20. Poulter advertises, promotes, offers to sell and sells the above products to the public on the commercial sites eBay and Kickstarter and, on information and belief, through other commercial channels such as comic book conventions.

COUNT ONE
(Malicious Use Of Process)

21. The allegations in paragraphs 3 – 22 are repeated as if set forth fully herein.

22. Plaintiffs-Counterclaim Defendants' original action, commenced in the courts of the State of Texas, as set forth in their Complaint, was brought without probable cause.

23. The bringing of the original action is actuated by malice.

24. The original action will terminate favorably to Defendant-Counterclaim Plaintiff Van Sciver (hereinafter “Van Sciver”).

25. Van Sciver suffered a special grievance, including emotional distress and money costs from defending against this meritless lawsuit.

COUNT TWO
(Trademark Counterfeiting)

26. This Count is for federal trademark counterfeiting under 15 U.S.C. § 1114.

27. The allegations in paragraphs 3 – 22 are repeated as if set forth fully herein.

28. Plaintiff-Counterclaim Defendant Poulter (hereinafter “Poulter”) has used spurious designations that are identical with, or substantially indistinguishable from, Van Sciver’s Registered Trademark on goods covered by the registration for Van Sciver’s Registered Trademark.

29. Poulter has intentionally used these spurious designations, knowing they are counterfeit, in connection with the promotion, sale, offering for sale and distribution of goods.

30. Poulter’s use of Van Sciver’s Registered Trademark to promote, offer for sale, distribute and sell goods bearing counterfeits was and is without the consent of Van Sciver.

31. Poulter's unauthorized use of Van Sciver's Registered Trademark on and in connection with the promotion, sale, offering for sale and distribution of products constitutes Poulter's use of the Registered Trademark in commerce.
32. Poulter's unauthorized use of Van Sciver's Registered Trademark as set forth above is likely to:
 - (a) cause confusion, mistake and deception;
 - (b) cause the public to believe that Poulter's products are the same as Van Sciver's products and/or that Poulter's products are authorized, sponsored or approved by Van Sciver or that they are affiliated, connected or associated with or in some way related to Van Sciver; and
 - (c) result in Poulter unfairly benefiting from Van Sciver's advertising and promotion and profiting from the reputation of Van Sciver and his Van Sciver Registered Trademark all to the substantial and irreparable injury of the public, Van Sciver and the Van Sciver Registered Trademark and the substantial goodwill represented thereby.
33. Poulter's acts constitute willful trademark counterfeiting in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.
34. By reason of the foregoing, Poulter is liable to Van Sciver for:
 - (a) statutory damages in the amount of:
 - \$200,000 for each counterfeit mark per type of goods sold, offered for sale, or distributed, or
 - if the court finds that the use of the counterfeit mark was willful, \$2,000,000 for each counterfeit mark per type of goods sold, offered for sale as provided by 15 U.S.C. § 1117(c) of the Lanham Act, or
 - (b) at Van Sciver's election at any time before final judgment is rendered by the trial court, pursuant to 15 U.S.C. § 1117 (b) and unless the court finds extenuating circumstances, a mandatory

award to Van Sciver of judgment for three times such profits or damages, whichever amount is greater, together with reasonable attorney's fees, investigative fees and pre-judgment interest.

COUNT THREE
(Trademark Infringement)

35. This Count is for federal trademark infringement under 15 U.S.C. § 1114.
36. The allegations in paragraphs 3 – 22 are repeated as if set forth fully herein.
37. Poulter's activities constitute Poulter's use in commerce of Van Sciver's Registered Trademark. Poulter uses Van Sciver's Registered Trademark in connection with Poulter's sale, offers of sale, distribution and promotion of Poulter's goods bearing infringements and/or counterfeits of Van Sciver's Registered Trademark.
38. Poulter has used Van Sciver's Registered Trademark, knowing it is the exclusive property of Van Sciver, in connection with Poulter's sale, offers of sale, distribution and promotion of Poulter's goods bearing counterfeits or infringements of Van Sciver's Registered Trademark.
39. Poulter's activities create the false and misleading impression that Poulter is sanctioned, assigned or authorized by Van Sciver to use Van Sciver's Registered Trademark to advertise, manufacture, distribute, appraise, offer for sale or sell goods bearing Van Sciver's Registered Trademark when Poulter is not so authorized.
40. Poulter engages in the aforementioned activity with the intent to confuse and deceive the public into believing that he and the goods he sells are in some way sponsored, affiliated or associated with Van Sciver when in fact there is no business relationship between Poulter and Van Sciver of any kind.
41. Poulter's use of Van Sciver's Registered Trademark has been without the consent of Van Sciver, is likely to cause confusion and mistake in the minds of the public and, in particular, tends to and does falsely create the impression that the goods promoted, distributed and sold by Poulter are warranted, authorized, sponsored or approved by Van Sciver when, in fact, they are not.

42. Poulter's unauthorized use of Van Sciver's Registered Trademark has resulted in Poulter unfairly benefiting from Van Sciver's advertising and promotion, and profiting from the reputation of Van Sciver and Van Sciver's Registered Trademark to the substantial and irreparable injury of the public, Van Sciver and Van Sciver's Registered Trademark and the substantial goodwill represented thereby.

43. Poulter's acts constitute willful trademark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

44. By reason of the foregoing, Poulter is liable to Van Sciver for: (a) and amount representing three (3) times Van Sciver's damage and/or Poulter's illicit profits; and (b) reasonable attorney's fees, investigative fees and pre-judgment interest pursuant to 15 U.S.C. 1117.

**COUNT THREE
(False Designation of Origin)**

45. This is Count is for False Designation of Origin in violation of Van Sciver's trademark rights under 1125(a).

46. The allegations in paragraphs 3 – 22 are repeated as if set forth fully herein.

47. Poulter's use in commerce of the mark COMICSGATE, described above, is likely to cause confusion, or cause mistake, or deceive as to the origin, sponsorship, or approval of Poulter's goods or commercial activities. Specifically, the public will wrongly associate Poulter's goods with those originating with, sponsored by or approved by Van Sciver.

48. In view of the acts described above, Poulter's use constitutes a false designation of origin, false or a misleading description of fact, or a false or misleading representation of fact.

49. Van Sciver believes he is, or is likely to be, damaged by Poulter's acts and as a result Poulter is liable to Van Sciver under 15 U.S.C. § 1125 (a)(3).

PRAAYER FOR RELIEF

WHEREFORE, Defendant-Counterclaim Plaintiff Van Sciver requests the Court order the following relief:

1. That the Court enter an injunction ordering that Plaintiff-Counterclaim Defendant Poulter, his company and any persons in privity or acting in concert with them be enjoined from:
 - a) using any reproduction, counterfeit, copy or colorable imitation of Van Sciver's Registered Trademark to identify any goods or the rendering of any services not authorized by Van Sciver;
 - b) engaging in any course of conduct likely to cause confusion, deception or mistake, or injure Van Sciver's business reputation or weaken the distinctive quality of Van Sciver's Registered Trademark, Van Sciver's name, reputation or goodwill;
 - c) using a false description or representation including words or other symbols tending to falsely describe or represent Poulter's unauthorized goods as being those of Van Sciver or sponsored by or associated with Van Sciver and from offering such goods in commerce;
 - d) further infringing Van Sciver's Registered Trademark by manufacturing producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, displaying or otherwise disposing of any products not authorized by Van Sciver bearing any simulation, reproduction, counterfeit, copy or colorable imitation of Van Sciver's Registered Trademark.
 - (e) using any simulation, reproduction, counterfeit, copy or colorable imitation of Van Sciver's Registered Trademark in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any unauthorized products in such fashion as to relate or connect, or tend to relate or connect, such products in any way to Van Sciver or to any goods sold, manufactured, sponsored or approved by, or connect with Van Sciver;

(f) making any statement or representation whatsoever, or, using any false designation of origin or false description, or performing any act, which can or is likely to lead the trade or public, or individual members thereof, to believe that any services provided, products manufactured, distributed, sold or offered for sale, or rented by Poulter are in any way associated or connected with Van Sciver, or are provided, sold, manufactured, licensed, sponsored, approved or authorized by Van Sciver;

g) engaging in any conduct constituting an infringement of Van Sciver's Registered Trademark or Van Sciver's rights in, or to use, or to exploit, said trademark, or constituting any weakening of Van Sciver's name, reputation and goodwill;

h) secreting, destroying, altering, removing, or otherwise dealing with the unauthorized products which contain any information relating to the importing, manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, or displaying of all unauthorized products which infringe Van Sciver's Registered Trademark;

i) effecting assignments or transfers, forming new entities or associations or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in subparagraphs (a) through (h).

2. That Poulter, within ten (10) days of judgment, take all steps necessary to remove from all business owned, operated or controlled by Poulter, all text or other media offering for sale any merchandise bearing the infringements or counterfeits of Van Sciver's 'Registered Trademark, or marks substantially indistinguishable therefrom.

3. That Poulter, within thirty (30) days of judgment, file and serve Van Sciver with a sworn statement setting forth in detail the manner and form in which he has complied with this injunction pursuant to 15 U.S.C. § 1116(a).

4. That Poulter be required to deliver up for destruction to Van Sciver all unauthorized materials bearing any of Van Sciver's Registered Trademark in association with unauthorized goods or services and the means for production of same pursuant to 15 U.S.C. § 1118.
5. Requiring Poulter to pay to Van Sciver such damages Van Sciver has sustained as a consequence of Poulter's counterfeiting and infringement of Van Sciver's Registered Trademark and to account for all gains, profits and advantages derived by Poulter from the sale of his infringing merchandise bearing Van Sciver's Registered Trademark and that the award to Van Sciver be trebled as provided for under 15 U.S.C. 1117; alternatively, that Van Sciver be awarded statutory damages pursuant to 15 U.S.C. 1117(c) of up to \$2,000,000 for each mark per type of goods sold or offered for sale that Poulter has willfully counterfeited and infringed.
6. Ordering that Van Sciver recover the costs of this action, together with reasonable attorneys' fees and pre-judgement interest in accordance with 15 U.S.C. 1117.
7. Ordering that Van Sciver recover attorneys' fees due to Plaintiffs' malicious use of prosecution.
8. Directing that this Court retain jurisdiction of this action for the purpose of enabling Van Sciver to apply to the Court at any time for such further orders and interpretations or execution of any Order entered in this action, for the modification of any such Order, for the enforcement or compliance therewith and for the punishment of any violations thereof.
9. Ordering that pursuant to 11 U.S.C. § 523(a)(6), Poulter be prohibited from a discharge under 11 U.S.C. § 727 for malicious, willful and fraudulent injury to Van Sciver.
10. Awarding to Van Sciver such other and further relief as the Court may deem just and proper, together with the costs and disbursements that Van Sciver has incurred in connection with this action.

Respectfully submitted,

LEONARD, SCIOLLA, LEONARD & TINARI, LLP

BY: /S/ Keith N. Leonard

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DATED: December 12, 2022

Scott Houtteman, Esquire (admitted *pro hac vice*)

Houtteman Law LLC

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(202) 263-0808

Email: scott@houtteman.com

Co-counsel for Defendant, Ethan Van Sciver

DEMAND FOR STATEMENT OF DAMAGES

PLEASE TAKE NOTICE, that in accordance with Rule 4:5-2 of the New Jersey Court Rules, 1969, Plaintiffs are hereby requested and required to furnish the undersigned, within five (5) days, a written statement of the amount of damages claimed by Plaintiffs in the within action.

DEMAND FOR DOCUMENTS

PLEASE TAKE NOTICE, that in accordance with Rule 4:18-2 of the New Jersey Court Rules, 1969, Plaintiffs are hereby requested and required to furnish the undersigned, within five (5) days, any writings referred to by Plaintiffs in the within action and not attached to or provided with Plaintiffs' Complaint.

CERTIFICATION PURSUANT TO RULE 4:5-1

I hereby certify that the matter in controversy is not the subject of any other Court proceeding or arbitration. To the best of our knowledge and belief, no other parties need be joined at this time and no other proceedings are contemplated.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4 of the New Jersey Court Rules, 1969, Scott Houtteman, Esquire (admitted pro hac vice) of the law firm of Houtteman Law LLC,, is hereby designated as trial counsel for Defendant, Ethan Van Sciver, in this matter.

Respectfully submitted,

LEONARD, SCIOLLA, LEONARD & TINARI, LLP

BY: /S/ Keith N. Leonard

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Attorneys for Defendant, Ethan Van Sciver

DATED: December 12, 2022

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Email: scott@houtteman.com
Co-counsel for Defendant, Ethan Van Sciver

Civil Case Information Statement

Case Details: BURLINGTON | Civil Part Docket# L-000689-22

Case Caption: POULTER PRESTON VS VAN SCIVER

ETHAN

Case Initiation Date: 04/18/2022

Attorney Name: KEITH N LEONARD

Firm Name: LEONARD SCIOLLA LEONARD & TINARI, LLP

Address: 72 EAST MAIN ST

MOORESTOWN NJ 08057

Phone: 8562736679

Name of Party: DEFENDANT : VAN SCIVER, ETHAN

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: DEFAMATION

Document Type: Answer W/CounterClaim

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:
Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: PRESTON POULTER? NO

Are sexual abuse claims alleged by: JOHN T LAMONT? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b)

12/12/2022

Dated

/s/ KEITH N LEONARD

Signed

