

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NUTRIMOST, LLC,

Plaintiff,

v.

DR. HOWARD I. WERFEL individually,
t/d/b/a **40 DAY RESET, 40 DAY
RESET MANHATTAN, INC., 40 DAY
RESET HOBOKEN, INC., ZYTO
TECHNOLOGIES, INC., 201
MARKETING AND MEDIA, LLC,
ROGER TASHJIAN, DAVID GRANDY,
JANE TSILOVA, DAMIAN LOGAN,
DANIEL WERNIKOFF, JENNIFER
JENSEN, STACY GRAVINA, JACK
GRASSO, ROBERT WENGER,
TINAMARIE LOMBARDO, JAMES
VITALE, and MICHAEL WILCOX,**

Defendants.

COMPLAINT

Case No.: _____

Judge: _____

COMPLAINT

Filed on behalf of:
NUTRIMOST, LLC, Plaintiff

Counsel of Record for this Party:

Jeffrey R. Owen, Esquire
PA I.D. # 45896

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**t/d/b/a 40 DAY RESET, 40 DAY
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I. PRELIMINARY STATEMENT

1. This Complaint is filed under the Lanham Act, 15 U.S.C. § 1114 et. seq. to enjoin the wholesale misappropriation of the Plaintiff's intellectual property, trademarks, and tradenames; to stop the fraudulent sale of the Plaintiff's products and a counterfeit copy of its services to the general public, and to recover statutory damages, reasonable attorney's fees and costs by reason of the Defendants' violations of the Lanham Act; and other remedies available under applicable law through concurrent jurisdiction.

II. JURISDICTION

2. This Court has subject matter jurisdiction under 15 U.S.C. § 1121 as an action arising under 15 U.S.C. § 1125 (a) (“The Lanham Act”) irrespective of the amount in controversy or the presence or lack of diversity citizenship of the parties;

3. The Court has jurisdiction over the parties pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b); and pursuant to 28 U.S.C. § 1332, as there is diversity between the parties and the matter in controversy exceeds, exclusive of interest and costs, the sum of seventy-five thousand dollars.

III. PARTIES

4. Plaintiff, Nutrimost LLC, is a corporation created pursuant to the laws of the Commonwealth of Pennsylvania, with its registered office 135 Bella Vista Court, Murrysville, PA 15668, and a principal place of business at 10483 Frankstown Road, Pittsburgh, PA 15235.

5. Defendant Howard I. Werfel is an adult individual residing in the state of New York, with a principle place of business at 40 Lafayette Avenue, Suffern, NY 10901.

6. Defendant ZYTO Technologies, Inc. (“ZYTO”) is a corporation created pursuant to the laws of the state of Utah with a registered office address 387 S 520 W, Suite 200, Linden, UT 84042.

7. Defendant Roger Tashjian is an adult individual residing in the state of New Jersey with a principle place of business at 935 Woodland Ave., Oradell, NJ 07649.

8. Defendant 201 Marketing And Media, LLC is a corporation created pursuant to the laws of the State of New Jersey with a principle place of business at 935 Woodland Ave., Oradell, NJ 07649.

9. The following Defendants are persons or entities identified in internet advertising as being persons or entities who operate a “40 Day Reset Office” at the respective location indicated:

- a. Howard I. Werfel – 40 Lafayette Ave., Suffern, NY 10901;
- b. David Grandy - 500 W. Putnam Ave., Greenwich, CT 06830;
- c. Jane Tsilova - 316 Sinatra Drive, Hoboken, NJ 07033;
- d. 40 Day Reset Hoboken, Inc., a corporation created pursuant to the laws of the State of New Jersey with a principle place of business at 316 Sinatra Drive, Hoboken, NJ 07033;
- e. Damian Logan – 316 Sinatra Drive, Hoboken, NJ 07033;
- f. Daniel Wernikoff - Apex Gym, 400 Swenson Drive, Kenilworth, NJ 07033;
- g. Jennifer Jensen - 24 Lakeside Avenue, Pompton Lakes, NJ 07442;
- h. Damian Logan – 24 Lakeside Avenue, Pompton Lakes, NJ 07442;
- i. Stacy Gravina - 44 South Maple, Ridgewood, NJ 07450;
- j. Jack Grasso - 260 Madison Ave., 39th Street/8th floor, New York, NY 10016;
- k. 40 Day Reset Manhattan, Inc., a corporation created pursuant to the laws of the State of New York with a principle place of business at 260 Madison Ave., 39th Street/8th Floor, New York, NY 10016;
- l. Robert Wenger - 2 Lake Street, Monroe, NY 10950;
- m. Tinamarie Lombardo – 2 Lake Street, Monroe, NY 10950;
- n. James Vitale - 443 White Plains Road, Eastchester, NY 10709;
- o. Tinamarie Lombardo – 443 White Plains Road, Eastchester, NY 10709;
- p. Michael Wilcox - Main Street Market, 22 South Main Street, Doylestown, PA 18901;

- q. Jack Grasso – 305 W. 28th Street, New York, NY 10001; and,
- r. Jack Grasso – 85 Broad Street, New York, NY 10004.

FACTUAL BACKGROUND

10. Plaintiff Nutrimost, LLC (“Nutrimost”) has developed the technology used in a highly effective weightloss system.

11. It has licensed this technology to several medical and chiropractic doctors and other licensed practitioners (hereinafter “medical practitioners”) for use in their treatment of the general public within the confines of their professional practice (the “Nutrimost System”).

12. As set forth on the Website of the United States Patent and Trademark Office, Nutrimost has filed a Word Mark Registration with the United States Patent and Trademark Office at Serial Number 86421639, in categories related to “Dietary and Nutritional Supplements Used for Weight Loss”; and “Providing Weightloss and Nutritional Program Services.” See Exhibit “A” attached hereto.

13. Nutrimost has further expanded its services, and developed a Franchise model to replace the licensed use of the technology, to be used in the operation of the Nutrimost Weightloss Program, which is being introduced throughout the country in accordance with State and Federal Franchise laws.

14. The Nutrimost System employs proprietary computer analysis from informational “scans” that are obtained by use of a device known as the Zyto Scanner, and the Zyto Output tower.

15. These scans are analyzed by the licensed medical practitioners to determine the proper supplements to be provided to individuals to support their efforts in dieting and undergoing the Nutrimost Weightloss Program.

16. On or about May 8, 2014, Defendant Werfel became a Licensee of the Nutrimost System, by entering into an agreement with the Plaintiff known as the “NutriMost/EZ Practice Agreement”, licensing him to market his practice under a system of operation developed by Nutrimost known as the EZ Growth Practice Management System (a true and correct copy of the same is attached hereto as Exhibit “B”, and is referred to herein as the “Agreement”).

17. Pursuant to the Agreement, Werfel, was given access and training in the operation of devices manufactured by defendant Zyto, known as the Zyto Scanner, as well as the proprietary Nutrimost System,

18. Defendant Werfel used the Nutrimost System in providing weightloss services to members of the general public.

19. Under the Agreement, Defendant Werfel was provided with access to the Nutrimost System, technology, marketing materials, and advertising media, including but not limited to:

- a. His use of the Nutrimost Edition of the Zyto Scanner, the Zyto Hand Cradle and the Special Nutrimost Edition Zyto Output Tower;
- b. His access to and use of the proprietary Nutrimost Weight Loss Formula to be used in providing services to retail consumers;
- c. A Product known as the Nutrimost NRF Carrier substance, necessary to provide those services;
- d. Nutrimost Scripts and Radio Programs;

- e. Sample marketing and retail sales materials;
 - f. Seminars outlining and training Defendant Werfel the use of the Nutrimost Technology;
 - g. Access to Nutrimost training resources;
 - h. Access to specific seminars training the Defendant Werfel in the use of the Nutrimost proprietary “NRF” technology;
 - i. Copies of the Manuals to be provided to those individuals undertaking a weightloss program under the Nutrimost System;
 - j. Copies of the Weightloss Journals to be provided to those individuals;
 - k. “Nutrimost Bio Surveys” to be used in providing services to those individual.
20. The Nutrimost/EZ Practice Agreement, License and Additional Provisions,

paragraph 3 states in pertinent part:

3.0 GRANT OF LICENSE

- 3.1 License Grant and Restrictions. Subject to the terms and conditions of this License Agreement, NUTRIMOST hereby grants Licensee an exclusive, right and license:
- (a) To exclusive use and practice the Licensed Technology with the NutriMost Scans **in the Licensee’s Professional Field of Use and ONLY Within the Zip Code Territory**. Licensee shall not have the right, unless prior specific written approval is granted by NUTRIMOST, to use, copy, modify, distribute, make derivative works of in its exploitation of the Licensed Technology;
 - (b) The right to use, sell, distribute, deliver, offer to sell and practice products and processes in the Field of Use within the Territory and to have such rights exercised on Licensee’s behalf by third party employees operating from the primary business location of the Licensee, in the manner set forth herein, and specifically as further elaborated in section 3.4.

- (c) Licensee is restricted in the use of the NUTRIMOST Licensed Technology as set forth in this agreement, and acknowledges specifically that the Licensed Technology will only be used in integration with the concurrent use of: the NutriMost Weight Loss Formula, the NutriMost NRF Carrier Substance, the NutriMost Ultimate Fat Loss Manual, and the NutriMost Ultimate Fat Loss Daily Journal, and with such other modifications as may be developed from time to time by NUTRIMOST in the further refinements of the Licensed Technology.
- (d) Licensee is not permitted the right to grant sublicenses in the use of the Licensed Technology and is not permitted to resell or purchase any NutriMost products for any doctor, office or individual who is not a current NutriMost Licensee.
- (e) Licensee is not permitted to sell any NUTRIMOST Formulas including the Weight Loss Formula, the NRF Carrier Formula, the NUTRIMOST Manual or Journal on the Internet. The Licensee is only permitted to sell the NutriMost Weight Loss Program as a complete program within the operation of its Practice.

21. Despite these prohibitions, Defendant Werfel has used, copied, modified, distributed, and made derivative works of the Licensed Technology in the development and marketing of an identical but competing weightloss program, known at the “40 Day Reset.”

22. This activity constitutes an unlawful exploitation of the Licensed Technology;

23. Defendant Werfel has also operated the 40 Day Reset program with the concurrent use of the NutriMost Weight Loss Formula, the NutriMost NRF Carrier Substance, the NutriMost Ultimate Fat Loss Manual, and the NutriMost Ultimate Fat Loss Daily Journal, in fact selling the same as if they were developed by him, and integrated into the 40 Day Reset program.

24. At a time unknown to the Plaintiff, Defendant Werfel began operating offices utilizing the Plaintiff’s technology in locations that were not licensed to him.

25. Defendant Werfel has misappropriated the Nutrimost System, and through a wholesale copying, has rebranded the system and marketed it throughout the United States under the name “40 Day Reset.”

26. The 40 Day Reset System is being marketed in at least the following Office Locations, which include areas outside of the area of the original license:

CONNECTICUT:

500 W. Putnam Ave., Greenwich, CT 06830

NEW JERSEY:

316 Sinatra Drive, Hoboken, NJ 07033

Apex Gym, 400 Swenson Drive, Kenilworth, NJ 07033

24 Lakeside Avenue, Pompton Lakes, NJ 07442

44 South Maple, Ridgewood, NJ 07450

NEW YORK

260 Madison Ave., 39th Street/8th floor, New York, NY 10016

85 Broad Street, New York, NY 10004

2 Lake Street, Monroe, NY 10950

40 Lafayette Avenue, Suffern, NY 10901

443 White Plains Rd., Eastchester, NY 10709

PENNSYLVANIA:

Main Street Market, 22 South Main Street, Doylestown, PA 18901

27. On its Website, “40DayReset.com”, Defendant uses Nutrimost testimonial videos and images directly copied from the Nutrimost System. True and correct representative copies of these website materials are attached hereto and incorporated herein as Exhibit “C”.

28. In addition, the 40 Day Reset program has been publicized thousands of times through the following media outlets and in social media, see representative copies attached hereto as Exhibit “D”, some of which demonstrate clear confusion in the market place and inclusion of Nutrimost products and materials displayed together with references to or actual 40Day Reset materials, representative copies of which are attached hereto as Exhibit “E”:

- a. WGCH 1490AM – Greenwich, CT
- b. WLIB 1190AM – New York, NY
- c. WGHT 97.1FM (Also known as Hot97) – New York, NY
- d. WRCR 1300AM – Spring Valley, NY
- e. GQ Magazine/www.gq.com
- f. Twitter - @40DayReset
- g. Instagram – 40DayReset
- h. www.40DayReset.com
- i. Facebook

29. A primary means of nationally publicizing the 40DayReset program is through the efforts and endorsement of high profile recording artists and DJs which reference the program throughout their radio and TV appearances, twitter posts, Instagram posts, and Facebook accounts, which are electronically sent to their social media followers which number in the tens of thousands. See representative copies of these materials also included within Exhibit “D” attached hereto.

30. The Defendant utilizes the ZYTO system of scanning to approximate the effect of the Nutrimost System.

31. Defendant Zyto has provided the Zyto technology to Werfel, with knowledge that Werfel was using the same in conducting the unlawful activities set forth herein, and in violation of the Agreement.

32. The Defendant uses the Plaintiff's NRF technology in the 40 Day Reset program, renaming it CERF technology. See Exhibit "F" attached hereto.

33. Defendants Tasjian and 201 Marketing And Media, LLC, at the same time they were being retained by Nutrimost to assist in marketing, advertising and media, internet, and telephone services in support of the Nutrimost System, were also actively participated with Defendant Werfel in providing the 40 Day Reset advertising pieces, media appearances, domain routing, internet support, and telephone marketing; all of which unlawfully incorporated references to the Nutrimost System as set forth herein.

34. Defendants Tashjian and 201 Marketing And Media LLC have participated in the Unlawful Activities of the 40 Day Reset program, while actively preparing advertising and marketing for Plaintiff, and with full knowledge of the fact that Werfel did not have the rightful use of the same.

35. Through the operation of the joint enterprise described herein, the defendants have together systematically copied, diverted, and taken the Plaintiffs property, and converted it to their own use for their monetary gain.

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

Plaintiff v. Defendant Werfel, 40 Day Reset Manhattan, Inc., 40 Day Reset Hoboken, Inc., 201 Marketing And Media, LLC, Roger Tashjian, David Grandy, Jane Tsilova, Damian Logan, Daniel Wernikoff, Jennifer Jensen, Stacey Gravina, Jack Grasso, Robert Wenger, Tinamarie Lombardo, James Vitale, and Michael Wilcox.

36. The allegations of Paragraphs 1 through 35 and 48 through 88 are hereby incorporated by reference as if fully restated at length herein.

37. Defendants' distribution, marketing, promotion, offering for sale, and sale of goods that bear the Nutrimost Trademark is likely to cause confusion, mistake, or deception as to the source, affiliation, sponsorship, or authenticity of Defendants' goods. As a result of Defendants' unauthorized use of trademarks that are identical to and/or confusingly similar to Nutrimost's federally registered mark, the public is likely to believe that Defendants' goods have been manufactured, approved by, or are affiliated with Nutrimost, or that the Defendant has the right to distribute these items. Consequently, Nutrimost's ability to gain revenue through the sale of merchandise bearing its trademarks is limited.

38. Defendants' unauthorized use of the Plaintiff's Trademarks falsely represents Defendants' store and products as emanating from or being authorized by the Plaintiff and places beyond the Plaintiff's control the quality of products bearing the their Trademarks.

39. Defendants' infringement of Plaintiff's trademarks is willful, intended to reap the benefit of the goodwill of Nutrimost, and violates Section 32(1) of the Lanham Act, 15 U.S.C. §1114(1).

40. As a result of Defendants wrongful conduct, the Plaintiff has suffered, and will continue to suffer, substantial damages. Under 15 U.S.C. § 1117 (a). The Plaintiff is entitled

to recover damages, which include any and all profits Defendants have made as a result of their wrongful conduct.

41. In addition, because Defendants' infringement of Plaintiff's trademark was willful within the meaning of the Lanham Act, the award of actual damages and profits should be trebled pursuant to 15 U.S.C. § 1117(b). In the alternative, Plaintiff is entitled to statutory damages for each instance of use of counterfeit marks, under 15 U.S.C. § 1117(c).

42. Nutrimost is also entitled to injunctive relief pursuant to 15 U.S.C. § 1116. Nutrimost has no adequate remedy at law for Defendants' wrongful conduct because, among other things,

- a. Nutrimost trademarks are a unique and valuable property which has no readily determinable market value,
- b. Defendants' infringement constitutes harm to Nutrimost such that NUTRIMOST could not be made whole by any monetary award,
- c. If Defendants' wrongful conduct is allowed to continue, the public is likely to become further confused, mistaken, or deceived as to the source, origin, or authenticity of the infringing materials, and
- d. Defendants' wrongful conduct, and the resulting damage to Nutrimost, is continuing.

43. The harm suffered by the Plaintiff in the absence of an injunction far exceeds any harm that might be suffered by Defendants if an injunction is issued. Indeed, Defendants will suffer *no* if they are merely enjoined from infringing upon the Plaintiff's trademarks, trade name, and proprietary system.

44. An injunction would not disserve the public interest. Rather, the injunction would serve the public interest because it deserves not to be led astray by Defendants' unlawful activities.

45. Plaintiff is willing to post bond as directed by the Court.

46. Nutrimost is also entitled to an order compelling the impounding of all infringing materials being used, offered, marketed, or distributed by Defendants, and to trebled damages, because Defendants' violations consist of the use of counterfeit trademarks pursuant to 15 U.S.C. § 1116(d).

47. Nutrimost is also entitled to recover its attorneys' fees and costs of suit pursuant to 15 U.S.C. § 1117.

WHEREFORE, Plaintiff, Nutrimost, Inc. prays for relief from this Honorable Court, requesting that:

- a. A preliminary and permanent injunction be issued enjoining Defendants, and any employees, agents, servants, officers, representatives, directors, attorneys, successors, affiliates, assigns, and entities owned or controlled by Defendants, and all those in active concert or participation with Defendants, and each of them who receives notice directly or otherwise of such injunction from:
 - i. Using Nutrimost Trademarks, or any other trademarks that are confusingly similar to the Nutrimost Trademarks, for the sale of any products, or making any other unlawful use of the Nutrimost Trademarks;
 - ii. Using any false designation of origin or false description, or performing any act which is likely to lead members of the trade or public to believe

that any product manufactured, imported, distributed, offered for sale, or sold by Defendants is in any manner associated or connected with Nutrimost, or is licensed, sponsored, approved, or authorized by Nutrimost;

- iii. Engaging in any other activity constituting unfair competition with Nutrimost, or constituting infringement of the Nutrimost Trademarks;
- iv. Taking any action, including the unauthorized use of the Nutrimost Trademarks, that dilutes the unique association between the Nutrimost Trademarks and the Plaintiff or its Franchisees, or that tarnishes the reputation or image of Nutrimost;
- v. Disposing of, destroying, altering, moving, removing, concealing, tampering with, or in any manner secreting any business records (including computer records) of any kind, including invoices, correspondence, books of account, receipts or other documentation relating or referring in any manner to any retail services offered in connection with the Nutrimost Trademarks, or any mark or designation that is confusingly similar to any of the Nutrimost Trademarks:
- vi. Operating the 40 Day Reset Program, or any other program promoting or supporting weightloss, or the use of a Zyto Scanner or similar device, or;
- vii. Instructing, assisting, aiding or abetting any other person or entity in engaging in or performing any of the activities referred to in the subparagraphs above.

- b. The Court enter an order pursuant to 15 U.S.C. § 1116(a)(d)(1)(A) impounding all counterfeit and infringing merchandise and materials bearing any of Nutrimost trademarks.
- c. The Court enter an Order directing Defendants to account to Plaintiff for all sales made and receipts in their operation of a 40 Day Reset office or a non-licensed Nutrimost office;
- d. The Court Awards Plaintiff its actual damages, trebled pursuant to 15 U.S.C. §1117(a) & (b), arising out of Defendants' acts of willful trademark infringement.
- e. The Court Enter an Order Awarding Plaintiff its actual damages, trebled pursuant to 15 U.S.C. §1116(d), arising out of Defendants' use of counterfeit trademarks.
- f. The Court Enter an Order Awarding Plaintiff its actual damages, trebled pursuant to 15 U.S.C. §1117(a), arising out of Defendants' acts of willful unfair competition.
- g. The Court Enter an Order Awarding to Plaintiff interest, including pre-judgment interest, on the foregoing sums.
- h. The Court Enter an Order Awarding Plaintiff its costs in this civil action, including reasonable attorneys' fees and expenses, pursuant to 15 U.S.C. § 1117(a) and (b).
- i. The Court Enter an Order Awarding Plaintiff exemplary and punitive damages to deter any future willful infringement as the Court finds appropriate.
- j. The Court Enter an Order Directing such other action as the Court may deem appropriate to prevent members of the industry and the public from deriving

the erroneous impression that any goods offered, advertised, or promoted by or on behalf of Defendants are authorized by Nutrimost or related in any way to Nutrimost products or services.

- k. The Court Enter an Order Directing that Defendants file with the Court and serve upon Plaintiff's counsel within thirty (30) days after entry of judgment a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the above.
- l. The Court Award Plaintiff such further relief as the Court may deem just and proper.

COUNT II
UNFAIR COMPETITION
(15 U.S.C. § 1125(a))

Plaintiff v. Defendant Werfel, 40 Day Reset Manhattan, Inc., 40 Day Reset Hoboken, Inc., 201 Marketing And Media, LLC, Roger Tashjian, David Grandy, Jane Tsilova, Damian Logan, Daniel Wernikoff, Jennifer Jensen, Stacey Gravina, Jack Grasso, Robert Wenger, Tinamarie Lombardo, James Vitale, and Michael Wilcox.

48. The allegations of Paragraphs 1 through 47 and 54 through 88 are hereby incorporated by reference as if fully restated at length herein.

49. Defendants' distribution, marketing, promotion, offering for sale, and sale of goods bearing the NUTRIMOST Trademarks constitute false designations of origin and false descriptions or representations that Defendants' products originate from or are authorized by Nutrimost, when in fact they are not. Such conduct limits Nutrimost ability to interact with potential franchisees and the public, to develop its franchise system, and to sell its product to consumers.

50. As a result of Defendants' unauthorized use of the Nutrimost Trademarks and/or marks that are confusingly similar to the Nutrimost Trademarks, the public is likely to be misled and confused as to the source, sponsorship, or affiliation of Defendants' products.

51. Defendants' conduct is willful, intended to reap the benefit of Nutrimost goodwill, and violates Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

52. Defendants' wrongful conduct is likely to continue unless restrained and enjoined.

53. As a result of Defendants' wrongful conduct, Nutrimost has suffered and will continue to suffer damages. Nutrimost is entitled to injunctive relief and to an order compelling the impounding of all imitation trademarks being used, offered, advertised, marketed, installed, or distributed by Defendants. Nutrimost has no adequate remedy at law for Defendants' wrongful conduct because, among other things,

- a. Nutrimost trademarks are unique and valuable properties that have no readily determinable market value,
- b. Defendants' infringement constitutes harm to Nutrimost such that Nutrimost could not be made whole by any monetary award,
- c. If Defendants' wrongful conduct is allowed to continue, the public is likely to become further confused, mistaken, or deceived as to the source, origin, or authenticity of the infringing materials, and (d) Defendants' wrongful conduct, and the resulting damage to Nutrimost, is continuing.

WHEREFORE, Plaintiff, Nutrimost, Inc. prays for relief from this Honorable Court, requesting that:

- a. A preliminary and permanent injunction be issued enjoining Defendants, and any employees, agents, servants, officers, representatives, directors, attorneys, successors, affiliates, assigns, and entities owned or controlled by Defendants, and all those in active concert or participation with Defendants, and each of them who receives notice directly or otherwise of such injunction from:
 - i. Using Nutrimost Trademarks, or any other trademarks that are confusingly similar to the Nutrimost Trademarks, for the sale of any products, or making any other unlawful use of the Nutrimost Trademarks;
 - ii. Using any false designation of origin or false description, or performing any act which is likely to lead members of the trade or public to believe that any product manufactured, imported, distributed, offered for sale, or sold by Defendants is in any manner associated or connected with Nutrimost, or is licensed, sponsored, approved, or authorized by Nutrimost;
 - iii. Engaging in any other activity constituting unfair competition with Nutrimost, or constituting infringement of the Nutrimost Trademarks;
 - iv. Taking any action, including the unauthorized use of the Nutrimost Trademarks, that dilutes the unique association between the Nutrimost Trademarks and the Plaintiff or its Franchisees, or that tarnishes the reputation or image of Nutrimost;

- v. Disposing of, destroying, altering, moving, removing, concealing, tampering with, or in any manner secreting any business records (including computer records) of any kind, including invoices, correspondence, books of account, receipts or other documentation relating or referring in any manner to any retail services offered in connection with the Nutrimost Trademarks, or any mark or designation that is confusingly similar to any of the Nutrimost Trademarks:
 - vi. Operating the 40 Day Reset Program, or any other program promoting or supporting weightloss, or the use of a Zyto Scanner or similar device, or;
 - vii. Instructing, assisting, aiding or abetting any other person or entity in engaging in or performing any of the activities referred to in the subparagraphs above.
- b. The Court enter an order impounding all counterfeit and infringing merchandise and materials bearing any of Nutrimost trademarks.
 - c. The Court enter an Order directing Defendants to account to Plaintiff for all sales made and receipts in their operation of a 40 Day Reset office or a non-licensed Nutrimost office;
 - d. The Court Awards Plaintiff its actual damages, trebled pursuant to 15 U.S.C. §1117(a) & (b), arising out of Defendants' acts of willful trademark infringement.
 - e. The Court Enter an Order Awarding Plaintiff its actual damages, trebled pursuant to 15 U.S.C. §1116(d), arising out of Defendants' use of counterfeit trademarks.

- f. The Court Enter an Order Awarding Plaintiff its actual damages, trebled pursuant to 15 U.S.C. §1117(a), arising out of Defendants' acts of willful unfair competition.
- g. The Court Enter an Order Awarding to Plaintiff interest, including pre-judgment interest, on the foregoing sums.
- h. The Court Enter an Order Awarding Plaintiff its costs in this civil action, including reasonable attorneys' fees and expenses, pursuant to 15 U.S.C. § 1117(a) and (b).
- i. The Court Enter an Order Awarding Plaintiff exemplary and punitive damages to deter any future willful infringement as the Court finds appropriate.
- j. The Court Enter an Order Directing such other action as the Court may deem appropriate to prevent members of the industry and the public from deriving the erroneous impression that any goods offered, advertised, or promoted by or on behalf of Defendants are authorized by Nutrimost or related in any way to Nutrimost products or services.
- k. The Court Enter an Order Directing that Defendants file with the Court and serve upon Plaintiff's counsel within thirty (30) days after entry of judgment a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the above.
- l. The Court Award Plaintiff such further relief as the Court may deem just and proper.

COUNT III

COMMON LAW TRADEMARK INFRINGEMENT

Plaintiff v. Defendant Werfel, 40 Day Reset Manhattan, Inc., 40 Day Reset Hoboken, Inc., 201 Marketing And Media, LLC, Roger Tashjian, David Grandy, Jane Tsilova, Damian Logan, Daniel Wernikoff, Jennifer Jensen, Stacey Gravina, Jack Grasso, Robert Wenger, Tinamarie Lombardo, James Vitale, and Michael Wilcox.

54. The allegations of Paragraphs 1 through 53 and 63 through 88 are hereby incorporated by reference as if fully restated at length herein.

55. Nutrimost has common law rights in its Trademarks based on its continuous use of the Trademarks throughout the United States in connection with the sale of the products and services it sells and distributes in support of the Nutrimost franchise system.

56. Defendants' unauthorized use of Nutrimost Trademarks to promote, advertise, market, and/or sell their goods is likely to cause confusion, mistake, and deception of the public as to the identity and origin of Defendants' goods, or as to a connection or affiliation with Nutrimost, or permission from Nutrimost, that does not exist, causing irreparable harm to Nutrimost for which there is no adequate remedy at law. Defendants' conduct thus constitutes common law trademark infringement.

57. Despite their actual and constructive knowledge of Nutrimost ownership and prior use of the Nutrimost Trademarks, Defendants have continued to use these Trademarks without Nutrimost authorization or consent. Defendants' actions are deliberate and willful and have been done with the intention of trading upon the valuable goodwill built up by Nutrimost in its Trademarks.

58. Nutrimost has sustained injury, damage, and loss based on Defendants' actions.

59. The allegations of Paragraphs 1 through 30 and 35 through 46 are hereby incorporated by reference as if fully restated at length herein.

60. Defendants' distribution, marketing, promotion, offering for sale, and sale of goods bearing the Nutrimost Trademarks constitute false designations of origin and false descriptions or representations that Defendants' products originate from, or are offered, sponsored, authorized, licensed by, or otherwise somehow connected with Nutrimost, when in fact they are not. As a result of Defendants' conduct, the public is likely to believe that Defendants' goods or services have originated from and/or have been approved by Nutrimost.

61. Defendants' unauthorized use of the Nutrimost Trademarks falsely represents that Defendants' goods emanate from or are authorized by Nutrimost and places beyond Nutrimost control the quality of such products, and the message that is associated with such products.

62. Defendants' conduct is willful, intended to reap the benefit of the goodwill associated with the Nutrimost Trademarks, has caused and continues to cause damage and injury to Nutrimost, and constitutes common law unfair competition.

WHEREFORE, Plaintiff, Nutrimost, Inc. prays for relief from this Honorable Court, requesting that:

- a. A preliminary and permanent injunction be issued enjoining Defendants, and any employees, agents, servants, officers, representatives, directors, attorneys, successors, affiliates, assigns, and entities owned or controlled by Defendants, and all those in active concert or participation with Defendants, and each of them who receives notice directly or otherwise of such injunction from:
 - i. Using Nutrimost Trademarks, or any other trademarks that are confusingly similar to the Nutrimost Trademarks, for the sale of any

products, or making any other unlawful use of the Nutrimost

Trademarks;

- ii. Using any false designation of origin or false description, or performing any act which is likely to lead members of the trade or public to believe that any product manufactured, imported, distributed, offered for sale, or sold by Defendants is in any manner associated or connected with Nutrimost, or is licensed, sponsored, approved, or authorized by Nutrimost;
- iii. Engaging in any other activity constituting unfair competition with Nutrimost, or constituting infringement of the Nutrimost Trademarks;
- iv. Taking any action, including the unauthorized use of the Nutrimost Trademarks, that dilutes the unique association between the Nutrimost Trademarks and the Plaintiff or its Franchisees, or that tarnishes the reputation or image of Nutrimost;
- v. Disposing of, destroying, altering, moving, removing, concealing, tampering with, or in any manner secreting any business records (including computer records) of any kind, including invoices, correspondence, books of account, receipts or other documentation relating or referring in any manner to any retail services offered in connection with the Nutrimost Trademarks, or any mark or designation that is confusingly similar to any of the Nutrimost Trademarks;
- vi. Operating the 40 Day Reset Program, or any other program promoting or supporting weightloss, or the use of a Zyto Scanner or similar device, or;

- vii. Instructing, assisting, aiding or abetting any other person or entity in engaging in or performing any of the activities referred to in the subparagraphs above.
- b. The Court Enter an Order impounding all counterfeit and infringing merchandise and materials bearing any of Nutrimost trademarks.
- c. The Court Enter an Order directing Defendants to account to Plaintiff for all sales made and receipts in their operation of a 40 Day Reset office or a non-licensed Nutrimost office;
- d. The Court Awards Plaintiff its actual damages, with treble or punitive damages awarded and arising out of Defendants' acts of willful trademark infringement.
- e. The Court Enter an Order Awarding Plaintiff its actual damages, with treble or punitive damages awarded and arising out of Defendants' use of counterfeit trademarks.
- f. The Court Enter an Order Awarding Plaintiff its actual damages, with treble or punitive damages awarded and arising out of Defendants' acts of willful unfair competition.
- g. The Court Enter an Order Awarding to Plaintiff interest, including pre-judgment interest, on the foregoing sums.
- h. The Court Enter an Order Awarding Plaintiff its costs in this civil action, including reasonable attorneys' fees and expenses.
- i. The Court Enter an Order Awarding Plaintiff exemplary and punitive damages to deter any future willful infringement as the Court finds appropriate.
- j. The Court Enter an Order Directing such other action as the Court may deem appropriate to prevent members of the industry and the public from deriving

the erroneous impression that any goods offered, advertised, or promoted by or on behalf of Defendants are authorized by Nutrimost or related in any way to Nutrimost products or services.

- k. The Court Enter an Order Directing that Defendants file with the Court and serve upon Plaintiff's counsel within thirty (30) days after entry of judgment a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the above.
- l. The Court Award Plaintiff such further relief as the Court may deem just and proper.

COUNT IV
DILLUTION OF TRADEMARK
(15 U.S.C. § 1125(c))

Plaintiff v. Defendant Werfel, 40 Day Reset Manhattan, Inc., 40 Day Reset Hoboken, Inc., 201 Marketing And Media, LLC, Roger Tashjian, David Grandy, Jane Tsilova, Damian Logan, Daniel Wernikoff, Jennifer Jensen, Stacey Gravina, Jack Grasso, Robert Wenger, Tinamarie Lombardo, James Vitale, and Michael Wilcox.

63. The allegations of Paragraphs 1 through 62 and 67 through 88 are hereby incorporated by reference as if fully restated at length herein.

64. As set forth herein the Plaintiffs Tradename and Trademarks are famous and valuable prior to the commissions of Defendants' activities related to the Plaintiffs' marks, Defendants unlawful activities have diluted the marks by impairing their distinctiveness. As a result of Defendants' unlawful activities, consumers now associate the Nutrimost trademark with Defendants' 40 Day Reset activities, and related misrepresentations.

65. This association has had, and will have, a deleterious effect upon the Trademarks, goodwill, and business reputation of the Plaintiff.

66. Accordingly, Defendants' use has blurred and tarnished the Nutrimost trademarks, which constitutes trademark dilution in violation of 15 U.S.C. § 1125(c).

WHEREFORE, Plaintiff, requests the entry of a preliminary injunction and a judgment permanently enjoining Defendants from any further use of Plaintiff's Trademarks and Tradename in a way that may cause confusion, mistake, or deception to the public and awarding any such other and further relief that the Court deems just and proper.

COUNT V
CIVIL CONSPIRACY
Plaintiff against All Defendants

67. The allegations of Paragraphs 1 through 66 and 78 through 88 are hereby incorporated by reference as if fully restated at length herein.

68. Defendants are parties to a civil conspiracy.

69. Defendants conspired to do unlawful acts – namely to participate in a plan to misappropriate the name, goodwill, proprietary programs, property, and business of the Plaintiff.

70. Defendants committed overt acts in furtherance of their conspiracy, including those acts alleged against the respective defendants herein.

71. The Plaintiff has suffered, and continues to suffer irreparable harm as a result of Defendants' Conspiracy. As a result of the civil conspiracy, all other Defendants are liable to the same extent as Defendant Werfel for all acts committed in furtherance of the conspiracy.

72. Plaintiff is entitled to injunctive relief under general principle of equity.

73. As will be presented in a Motion for Preliminary Injunction, Plaintiff has a substantial likelihood of success on the merits.

74. Additionally, Plaintiff does not have an adequate remedy at law and will suffer imminent, irreparable harm in the absence of an injunction because Plaintiff cannot be adequately compensated in damages and Defendants have repeatedly and systematically shown that they will conspire to misappropriate, infringe and dilute the Plaintiff's name, trademarks, and further diminish the value of its business unless they are enjoined from doing so.

75. The harm suffered by Plaintiff in the absence of an injunction far exceeds any harm suffered by Defendants if an injunction is issued. Indeed, Defendants should suffer no harm if they are merely enjoined from conspiring together to commit unlawful acts of misappropriation and trademark infringement and dilution.

76. Finally an injunction would not disserve the public interest, but would in fact be beneficial to the general public interest because the public deserves not to be led astray by Defendants' wrongful actions.

77. Plaintiff is willing to post a bond as directed by the Court.

WHEREFORE, as a result of the Defendants' civil conspiracy, all defendants are liable to the same effect as Defendant Werfel. Further Plaintiff requests the entry of a preliminary injunction and a judgment permanently enjoining Defendants from undertaking jointly or severally, and activity to engage in the unauthorized use of the Plaintiff's Trademarks, Tradenames, intellectual property, the Nutrimost System or an approximation thereof, in any manner that may cause confusion, mistake, or deception of the public, and Further, that the Court award such other and further relief that the Court deems just and proper.

COUNT VI

DECLARATORY RELIEF

Plaintiff v. Defendant Werfel, 40 Day Reset Manhattan, Inc., 40 Day Reset Hoboken, Inc., 201 Marketing And Media, LLC, Roger Tashjian, David Grandy, Jane Tsilova, Damian Logan, Daniel Wernikoff, Jennifer Jensen, Stacey Gravina, Jack Grasso, Robert Wenger, Tinamarie Lombardo, James Vitale, and Michael Wilcox.

78. The allegations of Paragraphs 1 through 77 and 82 through 88 are hereby incorporated by reference as if fully restated at length herein.

79. An actual controversy exists between the Parties involving the rights of the Plaintiffs to determine how and when its names, intellectual property, and Nutrimost System are used, and to permit the Plaintiff to prevent harm to its reputation through unauthorized use of the same.

80. An actual controversy also exists between the parties regarding whether Defendants' have unlawfully infringed or diluted Plaintiff's trademark and trade name.

81. The foregoing factors present a real controversy, which is now ripe for adjudication.

WHEREFORE, Plaintiff seek declaratory judgment against all defendants as follows:

a. A declaration that Defendants have unlawfully misappropriated Plaintiff's name, trademarks, intellectual property, business model, and the Nutrimost System.

b. A declaration that Defendants have unlawfully infringed Plaintiff's trademarks in violation of 15. U.S.C. 1114;

c. A declaration that defendants have unlawfully diluted the Plaintiffs trademark in violation of 15 U.S.C. 1125 (c);

d. A declaration that Defendants' have unlawfully infringed the Plaintiff's trade name;

e. Awarding Plaintiff any such other and further relief that the Court deems just and proper.

**COUNT VII
INJUNCTION
Plaintiff v. All Defendants**

82. The allegations of Paragraphs 1 through 81 are hereby incorporated by reference as if fully restated at length herein.

83. Plaintiff is entitled to an injunction to stop the actions of defendants.

84. There is a high likelihood that Plaintiff will succeed on the merits of its claim.

85. Plaintiff has no adequate remedy at law.

86. Plaintiff will suffer irreparable harm if the relief is not granted. An injunction would not disserve the interest of the general public, but would in fact be beneficial to the public interest because the public deserves not to be led astray by Defendants wrongful actions.

87. An injunction is further warranted to stop the deleterious effect upon the general public caused by the Defendants' actions.

88. Plaintiff is willing to post a bond as directed by the Court.

WHEREFORE, Plaintiff, Nutrimost, Inc. prays for relief from this Honorable Court, requesting that:

- a. A preliminary and permanent injunction be issued enjoining Defendants, and any employees, agents, servants, officers, representatives, directors, attorneys, successors, affiliates, assigns, and entities owned or controlled by Defendants,

and all those in active concert or participation with Defendants, and each of them who receives notice directly or otherwise of such injunction from:

- i. Using Nutrimost Trademarks, or any other trademarks that are confusingly similar to the Nutrimost Trademarks, for the sale of any products, or making any other unlawful use of the Nutrimost Trademarks;
- ii. Using any false designation of origin or false description, or performing any act which is likely to lead members of the trade or public to believe that any product manufactured, imported, distributed, offered for sale, or sold by Defendants is in any manner associated or connected with Nutrimost, or is licensed, sponsored, approved, or authorized by Nutrimost;
- iii. Engaging in any other activity constituting unfair competition with Nutrimost, or constituting infringement of the Nutrimost Trademarks;
- iv. Taking any action, including the unauthorized use of the Nutrimost Trademarks, that dilutes the unique association between the Nutrimost Trademarks and the Plaintiff or its Franchisees, or that tarnishes the reputation or image of Nutrimost;
- v. Operating the 40 Day Reset Program, or any other program promoting or supporting weightloss.
- vi. The use of a Zyto Scanner or similar device in the furtherance of a weightloss program marketed to the public.

- vii. Instructing, assisting, aiding or abetting any other person or entity in engaging in or performing any of the activities referred to in the subparagraphs above.
- b. The Court Award Plaintiff such further relief as the Court may deem just and proper.

Respectfully Submitted,

COOPER OWEN & RENNER, P.C.

S/ JEFFREY R. OWEN, Esq.
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