

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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WEIGHT WATCHERS INTERNATIONAL,	:	
INC.	:	
	:	
Plaintiff,	:	
	:	Civil Action No.
- against -	:	
	:	<u>ECF Case</u>
CHRISTIAN ROBERT GOSSAIN d/b/a	:	
GOSSAIN SOFTWARE, LLC and	:	
WEIGHT LOSS WATCHERS LLC,	:	
and JOHN DOES 1-100,	:	
	:	<u>TRIAL BY JURY DEMANDED</u>
Defendants.	:	
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FIRST AMENDED COMPLAINT

Plaintiff, Weight Watchers International, Inc. (“Weight Watchers” or “Plaintiff”), by and through its attorneys, for its first amended complaint against defendant Christian Robert Gossain, d/b/a Gossain Software, LLC and Weight Loss Watchers LLC (“Gossain” or “Defendant”) and John Does 1-100, (“John Doe Defendants”) (collectively, “Defendants”), hereby alleges as follows:

NATURE OF ACTION

1. This is an action for patent infringement under 35 U.S.C. § 271, et seq., by Plaintiff Weight Watchers against Defendant Gossain and the John Doe Defendants for infringement of United States Patent Nos. 6,878,885, 6,040,531, and/or 8,382,482.

2. Plaintiff also seeks injunctive relief, lost profits, damages, costs, and attorneys’ fees for Defendant Gossain’s acts of trademark infringement, false designation of origin, false

descriptions, unfair competition, false advertising, deceptive trade practices, and intent to deceive, under the Lanham Act and under the common law and statutes of the State of New York.

JURISDICTION AND VENUE

3. This Court has original jurisdiction of this action pursuant to 15 U.S.C. §§ 1121 and 28 U.S.C. §§ 1331, 1332 and 1338.

4. The actions of Defendants complained of in this Complaint have been, and continue to be committed within the Southern District of New York.

5. Upon information and belief, Defendant Gossain contracts to supply goods, including through the sale of infringing products to the John Doe Defendants, and transacts business in New York and within this judicial district, and the tortious acts of Defendants complained of in this Complaint, including, without limitation, Defendant Gossain's advertising, promotion, offering for sale, and sale of infringing products, and/or the purchase and use of Defendant Gossain's infringing products by the John Doe Defendants, have been and continue to be committed, and have caused harm to Plaintiff, within this judicial district.

6. Upon information and belief, Defendant Gossain owns and/or operates in the U.S., and specifically in New York and this judicial district, one or more interactive web sites which utilize U.S. based ".com" domain names (e.g., www.gossainsoftware.com, www.protrackerapp.com), from which Defendant sells and/or facilitates the sale of his infringing products in to the United States including into New York and this judicial district, and including to the John Doe Defendants.

7. Defendant lists, advertises, and sells his infringing product via Apple Inc.'s "iTunes" online application store, or the "App Store," and links directly to the listings for his infringing products on the App Store store from a link on his U.S. based interactive web sites. Upon

information and belief, a substantial percentage of the sales of Defendant Gossain's infringing products made via the App Store are made into New York, and into this judicial district, including without limitation sales to the John Doe Defendants.

8. Accordingly, personal jurisdiction exists over Defendants pursuant to CPLR §§ 301 and 302.

9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

THE PARTIES

10. Weight Watchers is a corporation duly organized and existing under the laws of the Commonwealth of Virginia, having its principal place of business in New York, New York.

11. Upon information and belief, Defendant Gossain is an individual and a computer and software developer, doing business as the unincorporated entities "Gossain Software LLC" and "Weight Loss Watchers LLC." Upon information and belief, Gossain maintains his residence and place of business in Edmonton, Alberta, Canada.

12. Upon information and belief, the John Doe Defendants are as-of-yet unidentified customers of Gossain who have purchased from Gossain and have used infringing products (as defined in this Complaint, below) while residing in, or otherwise having sufficient jurisdictional contacts with, the State of New York and the Southern District of New York.

GENERAL ALLEGATIONS

13. Founded over 50 years ago, Weight Watchers is a global consumer products organization and the world's leading provider of weight management services and products. Weight Watchers is the creator and provider of the world famous "Weight Watchers" system and method for weight loss and weight maintenance. Through its various proprietary products and services, which include subscriptions to Weight Watchers Meetings (weekly in-person classes led by a Weight

Watchers trained leader), Weight Watchers Online*Plus* (online delivery of the Weight Watchers program), and Weight Watchers Personal Coaching (one-to-one phone sessions with a coach to help follow the Weight Watchers program), which subscriptions provide access to digital tools and mobile applications (collectively, “Products”), Weight Watchers helps its customers to lose weight and maintain a healthy weight. The Weight Watchers program, delivered through these Products, is comprised of a unique weight loss system that assigns values to food and exercise.

14. Since 1997, a core tenet of the Weight Watchers program has been Weight Watchers’ proprietary points-based weight-loss system. Under the POINTS® system, as augmented and updated by Weight Watchers through its more recent ProPoints®, PointsPlus®, and SmartPoints™ systems (collectively, the “System”), customers using any of the Products follow a personal “Points” budget made up of a daily target and weekly allowance of “POINTS” values according to various criteria. Food and daily exercise are calculated and assigned a specific value by Weight Watchers, based on Weight Watchers’ proprietary POINTS formulae. Customers using the Weight Watchers System may eat any foods they want as long as they stay within their POINTS budget.

15. The POINTS System is unique to Weight Watchers. The value for any individual food item is determined under the applicable proprietary POINTS formula by the nutritional profile of the item, including, depending upon the formula used, the item’s calories, fat, saturated fat, fiber, protein, sugar, and/or carbohydrates. Weight Watchers provides and sells Products, including books, software and mobile applications, that act as tools to assist its customers in calculating the Points values of the food they consume while utilizing the System.

The Patents

16. On or about July 18, 1997, Weight Watchers filed U.S. Patent Application No. 08/896,855 with the U.S. Patent and Trademark Office (the “PTO”), seeking to obtain patent protection for its proprietary POINTS System.

17. On or about March 21, 2000, the PTO issued to Weight Watchers U.S. Patent No. 6,040,531 for Weight Watchers’ “Process For Controlling Body Weight” (the “‘531 Patent”).

18. The ‘531 Patent is valid and subsisting.

19. Weight Watchers is the record owner of the ‘531 Patent.

20. Since the issuance of the ‘531 Patent, Weight Watchers has provided notice of the ‘531 Patent by placing such notice on its Products, the labels and packaging accompanying such Products, and/or Weight Watchers’ web site, mobile applications, and other promotional and sales materials.

21. On or about October 14, 2003, Weight Watchers filed U.S. Patent Application No. 10/682,966 with the U.S. Patent and Trademark Office (the “PTO”), seeking to obtain patent protection for its proprietary POINTS System.

22. On or about April 12, 2005, the PTO issued to Weight Watchers U.S. Patent No. 6,878,885 B2 for Weight Watchers’ “Process For Controlling Body Weight” (the “‘885 Patent”).

23. The ‘885 Patent is valid and subsisting.

24. Weight Watchers is the record owner of the ‘885 Patent.

25. Since the issuance of the ‘885 Patent, Weight Watchers has provided notice of the ‘885 Patent by placing such notice on its Products, the labels and packaging accompanying such Products, and/or Weight Watchers’ web site, mobile applications, and other promotional and sales materials.

26. On or about August 28, 2009, Weight Watchers filed U.S. Patent Application No. 12/550,240 with the U.S. Patent and Trademark Office (the “PTO”), seeking further patent protection for its proprietary POINTS System.

27. On or about February 26, 2013, the PTO issued to Weight Watchers U.S. Patent No. 8,382,482 B2 for Weight Watchers’ “Processes And Systems For Achieving And Assisting In Improved Nutrition Based On Food Energy Data And Relative Healthfulness Data” (the “‘482 Patent”).

28. The ‘482 Patent is valid and subsisting.

29. Weight Watchers is the record owner of the ‘482 Patent.

30. Since the issuance of the ‘482 Patent, Weight Watchers has provided notice of the ‘482 Patent by placing such notice on its Products, the labels and packaging accompanying such Products, and/or Weight Watchers’ web site, mobile applications, and other promotional and sales materials.

31. True and correct copies of the ‘531 Patent, the ‘885 Patent and the ‘482 Patent are attached to this Complaint as Exhibit A. The ‘531 Patent, the ‘885 Patent and the ‘482 Patent may be collectively referred to herein below as the “Patents.”

The Trademarks

32. Weight Watchers has adopted and used, and thus is the owner of several trademarks in connection with its Products and System, such as, without limitation, WEIGHT WATCHERS and WW, as well as a family of “POINTS” marks, including POINTS and POINTSPUS (the “Trademarks”).

33. Weight Watchers is the owner of U.S. Trademark Registrations (the “Trademark Registrations”) with respect to several of its Trademarks (the “Registered Trademarks”), including without limitation the following:

(a) Weight Watchers is the owner of United States Trademark Registration No. 1,395,251 for the Trademark WEIGHT WATCHERS, registered in International Class 41 for use in connection with dietary management seminars and instruction, and in International Class 42 for use in connection with dietary advice and/or counseling. This registered trademark has been used openly, notoriously, and continuously in interstate commerce since at least May, 1963, a time prior to any of the acts of Defendants complained of herein. Weight Watchers has satisfied all of the filing requirements under Lanham Act § 8 for this Trademark Registration, and this Trademark Registration is accordingly incontestable under Lanham Act § 15.

(b) Weight Watchers is the owner of United States Trademark Registration No. 2,120,106 for the Trademark WEIGHT WATCHERS, registered in International Class 9 in connection with computer programs for managing diet and nutrition. This registered trademark has been used openly, notoriously, and continuously in interstate commerce since at least December, 1996, a time prior to any of the acts of Defendants complained of herein. Weight Watchers has satisfied all of the filing requirements under Lanham Act § 8 for this Trademark Registration, and this Trademark Registration is accordingly incontestable under Lanham Act § 15.

(c) Weight Watchers is the owner of United States Trademark Registration No. 4,397,771 for the Trademark WW, registered in International Class 44 for use in connection with weight reduction planning, treatment and supervision. This registered trademark has been used openly, notoriously, and continuously in interstate commerce since at least December, 2012, a time prior to any of the acts of Defendants complained of herein.

(d) Weight Watchers is the owner of United States Trademark Registration No. 2,139,767 for the Trademark POINTS, registered in International Class 42 for use in connection with food nutrition consultation and advice. This registered trademark has been used openly, notoriously,

and continuously in interstate commerce since at least August, 1997, a time prior to any of the acts of Defendants complained of herein. Weight Watchers has satisfied all of the filing requirements under Lanham Act § 8 for this Trademark Registration, and this Trademark Registration is accordingly incontestable under Lanham Act § 15.

(e) Weight Watchers is the owner of United States Trademark Registration No. 3,163,684 for the Trademark POINTS, registered in International Class 44 for use in connection with weight reduction planning, treatment, and supervision. This registered trademark has been used openly, notoriously, and continuously in interstate commerce since at least August, 1997, a time prior to any of the acts of Defendants complained of herein. Weight Watchers has satisfied all of the filing requirements under Lanham Act § 8 for this Trademark Registration, and this Trademark Registration is accordingly incontestable under Lanham Act § 15.

(f) Weight Watchers is the owner of United States Trademark Registration No. 3,941,961 for the Trademark POINTSPLUS (and Design), registered in International Class 44 for use in connection with weight reduction, weight control, and nutrition planning and treatment services. This registered trademark has been used openly, notoriously, and continuously in interstate commerce since at least November, 2010, a time prior to any of the acts of Defendants complained of herein.

(g) Weight Watchers is the owner of United States Trademark Registration No. 3,932,648 for the Trademark POINTSPLUS, registered in International Class 44 for use in connection with weight reduction, weight control, and nutrition planning and treatment services. This registered trademark has been used openly, notoriously, and continuously in interstate commerce since at least November, 2010, a time prior to any of the acts of Defendants complained of herein.

34. All of the Trademarks are inherently distinctive and strong trademarks.

35. Because of Weight Watchers' extensive use and promotion of the Trademarks, and in light of the unsolicited media coverage and notoriety pertaining to Weight Watchers' Products, POINTS System, and Trademarks, the Trademarks have become famous throughout the United States and have become distinctive designations of goods and services uniquely associated with Weight Watchers, thereby serving to identify Weight Watchers as the single source of origin of Weight Watchers' Products and System, and its goods and services generally.

36. Weight Watchers used each of the Trademarks in interstate commerce prior to any of the acts of Defendants complained of herein, and the Trademarks are currently in such use.

37. Weight Watchers' use of its Trademarks has been open, notorious, and continuous since their respective dates of first use.

38. Weight Watchers has advertised and otherwise promoted its Trademarks extensively since their first use, through its website located at www.weightwatchers.com (the "WW Website"), its Weight Watchers Classes, through television, radio, print and digital media advertising, through sales of products such as food, magazines, electronic products, and by other means.

39. Weight Watchers' Products and System have been sold extensively bearing and/or otherwise in connection with the Trademarks.

40. Weight Watchers' Products and System, bearing or sold and/or promoted in connection with the Trademarks, have been the subject of unsolicited media coverage.

41. By virtue of Weight Watchers' use, advertising, promotion and sales of goods and services, including the Products and the System, bearing the Trademarks, and unsolicited media coverage featuring the Trademarks, the Trademarks have become associated with Weight Watchers

and have created an association between Weight Watchers and its Trademarks in the mind of consumers and the public in general.

Unlawful Actions of the Defendants

42. Without the authorization or consent of Weight Watchers, Defendants are making, using, and/ or selling products that infringe Weight Watchers' Patents.

43. On information and belief, prior to commencing the activities complained of in this Complaint, Defendant Gossain, a computer and software developer, was a subscribing customer of Weight Watchers. As such, Gossain had access to all of Weight Watchers' digital tools, mobile applications, and other Products, and knew that the Products, and Weight Watchers' POINTS System were patented and proprietary to Weight Watchers.

44. On information and belief, having used, and observed the qualities and functionalities of Weight Watchers' digital and other Products, and being a computer and software developer, Gossain determined that he could develop a product that would mimic and/or substitute for, and compete with, Weight Watchers' POINTS System and Products, and take advantage of a potentially lucrative market, by inducing customers who would otherwise patronize Weight Watchers, or who already were customers of Weight Watchers, to use Gossain's infringing product instead of Weight Watchers' POINTS System and Products.

45. On information and belief, in or about January, 2011, Defendant Gossain developed, reduced to practice, and began to market, advertise and sell without the knowledge, authorization and/or consent of Weight Watchers, a mobile application, designed to work with the Apple iOS on Apple iPhones, iPods, and iPads, entitled "My Score Plus" (the "First Infringing Product"). The First Infringing Product was designed to mimic Weight Watchers' System without requiring users to join Weight Watchers, by allowing its users to track and calculate Weight Watchers Points values assigned to food items and daily activities for purposes of weight loss and management. Like

Weight Watchers' proprietary Systems, the First Infringing Product had a weight tracker and a Points calculator allowing users to determine the Weight Watchers Points values assigned to individual foods.

46. Gossain and/or the First Infringing Product also used Weight Watchers' Trademarks, without authorization or consent, to promote the features of the product on Defendants' website gossainapps.com, which website linked users to a page on Apple Inc.'s iTunes App Store, through which users could purchase and download the First Infringing Product.

47. Weight Watchers learned of the First Infringing Product, and in 2011 began to contact both Defendant Gossain and Apple, stating that the First Infringing Product infringed Weight Watchers' Patents and Trademarks, and demanding that the First Infringing Product be removed from the iTunes App Store globally.

48. Defendants renamed the First Infringing Product, changing it to "Points Calculator Plus," in 2012. This updated product (the "Second Infringing Product") added a food database which displayed the PointsPlus values of the foods listed, copied directly from Weight Watchers Pocket Guide. On October 23, 2012, Weight Watchers again contacted Apple regarding Defendant Gossain's continued infringing activities and Apple forwarded the complaint to Gossain. Gossain never responded.

49. On information and belief, in or about November, 2014, Defendant Gossain developed, reduced to practice, and began to market, advertise and sell without the knowledge, authorization and/or consent of Weight Watchers, a successor version of the First and Second Infringing Products, designed to work with the Apple iOS on Apple iPhones, iPods, iPads, and the new Apple Watch, entitled "ProTracker Plus," (the "Infringing Product").

50. Continuing the design and functionalities of the First Infringing Product and the Second Infringing Product, the Infringing Product remains designed to mimic Weight Watchers' System without requiring users to join Weight Watchers, by allowing its users, including the John Doe Defendants, to track and calculate "Points" values assigned to food items and daily activities for purposes of weight loss and management. Like the Second Infringing Product, the Infringing Product features a weight tracker, a Points calculator, and a food database containing Points values assigned to individual foods.

51. Beginning in 2015, Weight Watchers again commenced to contact Defendant Gossain and Apple, demanding that the Infringing Product be removed from the App Store and that Gossain cease from marketing and selling the Infringing Product. Defendant Gossain, however, again refused to comply with Weight Watchers' demands, and continues to refuse to do so.

52. The Infringing Product infringes one or more claims of the '531 Patent, or in the alternative, one or more claims of the '885 Patent, or one or more claims of the '482 Patent, by making, using, offering for sale, and/or selling the patented process and System without the authority of Weight Watchers, and/or by contributing to and/or inducing the infringement of the '531 Patent, the '885 Patent, or the '482 Patent by the John Doe Defendants.

53. Specifically, and without limitation, Defendant Gossain, by making, offering for sale, and selling the Infringing Product, has:

- a. Directly infringed, literally or by equivalents, at least independent claims 1 and 12 of the '885 Patent;
- b. Induced and/or contributed to the infringement of at least independent claims 1, 13, and 17 of the '531 Patent by the John Doe Defendants, who through purchase and use of the Infringing Product have directly infringed, literally or by equivalents, such claims; and

c. Induced and/or contributed to the infringement of at least independent claims 1, 6, 11, and 21 of the '482 Patent by the John Doe Defendants, who through purchase and use of the Infringing Product have directly infringed, literally or by equivalents, such claims.

54. Without the authorization or consent of Weight Watchers, Defendant Gossain is also engaging in marketing, promotion, advertising, and/or sales activities that infringe Weight Watchers' Trademarks, and which in the alternative, in the event the Infringing Product does *not* infringe any of the Patents, constitutes unfair competition by falsely and misleadingly claiming and/or suggesting to consumers that the Infringing Product is consistent or compatible with Weight Watchers' proprietary System.

55. On information and belief, on or before January 2, 2014, Gossain acquired the domain name gossainsoftware.com, and thereafter until at least December, 2015 commenced to operate and maintained a website at that address on the Internet (the "Defendant Website"). During that time, the Defendant Website advertised and described the Infringing Product, and provided a link directly to a page on the Apple iTunes store on which consumers were able to purchase the Infringing Product.

56. Without Weight Watchers' permission, consent, or license, up until at least December, 2015, Defendant also unlawfully published, used and displayed several of Weight Watchers' Trademarks on the Defendant Website, thereby infringing those Trademarks.

57. For example, the homepage of the Defendant Website described the Infringing Product as "A complete set of tracking tools for the *Weight Watchers points plus* program."

58. By publishing, using and displaying this statement on the Defendant Website homepage, Defendant Gossain unlawfully used, and under the Lanham Act infringed Weight Watchers' WEIGHT WATCHERS, POINTS, and POINTS PLUS Trademarks by, without

limitation, creating an erroneous and confusingly false association between Defendant, the Infringing Product, and Weight Watchers' Products and System, and thereby creating a likelihood of confusion between Defendant's Infringing Product and Weight Watchers' Products and System.

59. At no time has Defendant Gossain been licensed or otherwise authorized or permitted to create a tracking tool, calculator, or any other application for Weight Watchers' System, or otherwise to use, publish, or display any of the Trademarks in connection with a weight loss application or otherwise.

60. Further, in the event that the Infringing Product is determined not to infringe one or more claims of the '531 Patent, the '885 Patent, or the '482 Patent, this statement on the Defendant Website's homepage falsely and misleadingly claimed and/or suggested to consumers that the Infringing Product is consistent or compatible with Weight Watchers' proprietary System, thereby constituting unfair competition and/or false advertising under the Lanham Act.

61. On information and belief, on or before Nov 18, 2014, Defendant Gossain acquired the domain name protrackerapp.com. Since that date, Defendant has operated and maintained, and currently operates and maintains a website at that address on the Internet ("Infringing Product Website"). During that time, the Infringing Product Website has advertised and described the Infringing Product, and has provided and currently provides a link directly to a page on the App Store on which consumers were, and are able to purchase the Infringing Product.

62. Without Weight Watchers' permission, consent, or license, Defendant Gossain has also unlawfully published, used and displayed, and continues to unlawfully publish, use, and display, several of Weight Watchers' Trademarks on the Infringing Product Website, thereby infringing those Trademarks.

63. For example, the “FAQ” page of the Infringing Product Website, which is accessed by a prominent link on the site’s homepage, poses or has posed the question “How does my weekly allowance work?,” and responds with “The weekly allowance of *WW Points Plus* is an additional allowance that you are entitled to each week and that you can use however you like.”

64. Additionally, the homepage of the Infringing Product Website also describes, or has described the Infringing Product as “A complete set of tracking tools for the *Weight Watchers points plus* program.”

65. By publishing and displaying these statements on the Infringing Product Website, Defendant Gossain unlawfully uses, and under the Lanham Act infringes Weight Watchers’ WEIGHT WATCHERS, WW, POINTS, and POINTSPLUS Trademarks by, without limitation, creating an erroneous and confusing false association between Defendant, the Infringing Product, and Weight Watchers’ Products and System, and thereby creating a likelihood of confusion between Defendant’s Infringing Product and Weight Watchers’ Products and System.

66. Further, in the event that the Infringing Product is determined not to infringe one or more claims of the ‘531 Patent, the ‘885 Patent, or the ‘482 Patent, these statements falsely and misleadingly claim and/or suggest to consumers that the Infringing Product is consistent with, or compatible with Weight Watchers’ proprietary System, thereby constituting unfair competition and/or false advertising under the Lanham Act.

67. As indicated above, both the Defendant Website, up until at least December, 2015, and the Infringing Product Website have linked, and/or currently link, to Defendant Gossain’ App Store page for the Infringing Products (the “Infringing Product App Store Site”). From the Infringing Product App Store Site, customers with iTunes can purchase and download (for US\$3.99) the Infringing Product for use on their iPhone, iPod, iPad, and/or Apple Watch.

68. By selling the Infringing Product via the Infringing Product App Store Site, Defendants are infringing, directly (literally or by equivalents) or by inducing or contributing to the direct infringement by the John Doe Defendants, one or more claims of the '531 Patent, one or more claims of the '885 Patent, or one or more claims of the '482 Patent, all as more specifically described and plead herein above.

69. Additionally, without Weight Watchers' permission, consent, or license, Defendant Gossain has also unlawfully published, used and displayed, and continues to unlawfully publish, use, and display, one or more of Weight Watchers' Trademarks on the Infringing Product App Store Site, thereby infringing those Trademarks.

70. For example, at the very top of the Infringing Product App Store Site, and on information and belief up until at least January, 2016, Defendant Gossain describes the Infringing Product as being entitled "ProTracker Plus *WW Watchers* Nutrition and Exercise Value Tracker, Database and Calculator."

71. On December 31, 2015, as part of their ongoing efforts to protect their Patents and Trademarks against Defendant Gossain's continued infringements, Weight Watchers' attorneys wrote to Defendants (the "2015 Demand Letter"), stating that the Infringing Product infringed at least one of the Patents, and further that the Defendant Website, the Infringing Product Website, and/or the Infringing Product App Store Site published content that infringed Weight Watchers' Trademarks.

72. The 2015 Demand Letter demanded that Defendant cease and desist from their infringing activities, including the promotion, advertising, and/or sale of Infringing Products, the false and misleading description of the Infringing Products as consistent or compatible with the Weight Watchers System, and the infringement of Weight Watchers' Trademarks.

73. Thereafter, Defendant Gossain changed the Infringing Product App Store Site's description of the name of the Infringing Product to read "ProTracker Plus *Watchers* Nutrition and Exercise Value Tracker, Database and Calculator," deleting the reference to Weight Watchers' Trademark WW.

74. On information and belief, Defendant Gossain thereafter dismantled, took down, or otherwise at least temporarily "hid" the Defendant Website, and adopted the Infringing Product Website. On information and belief, as of January, 2016, the link on the Infringing Product App Store Site to "Gossain Software LLC Website" was changed to point to the Infringing Product Website, to which it currently points, from the Defendant Website.

75. Below the top description on the Infringing Product App Store Site, in the "Description" section, the site has displayed, and/or currently displays the phrase "*Points* tracking on Apple Watch, iPad, iPhone and iPod!" Below this statement, in the "Customer Reviews" section, Defendant Gossain has also infringed and continues to infringe Weight Watchers' Trademarks by publishing two purported reviews that use one or more of the Trademarks.

76. One such purported review, by a customer described to be a "First time WW dieter!," states "I've never done Weight Watchers, but I really need to lose 15-20 pounds. My friend swears by WW and showed me the app ... I don't want to go weigh in ... don't want to pay for the membership ... wasn't even sure if I'd stick with it, so I searched "weight watchers" and this app came up first (before weight watchers!) and the reviews were excellent!"

77. A second review on the Infringing Product App Store Site is by someone who first proclaims "Thank you for points plus and not smart points!!!!" This reviewer then states "I just cancelled my weight watchers account after being incredibly displeased with the new points system.

Points plus has always worked well for me, I think because it allows [me] to indulge in moderation without completely throwing off your points.”

78. Each of the statements described above that are found on the Infringing Product App Store Site unlawfully use, and under the Lanham Act infringe Weight Watchers’ WEIGHT WATCHERS, WW, POINTS, and POINTS PLUS Trademarks by, without limitation, creating an erroneous and confusing false association between Defendant Gossain, the Infringing Product, and Weight Watchers’ Products and System, and by creating a likelihood of confusion between Defendant’s Infringing Product and Weight Watchers’ Products and System.

79. Further, in the alternative in the event that the Infringing Product is determined not to infringe the ‘531 Patent, the ‘885 Patent, or the ‘482 Patent, these statements falsely and misleadingly claim and/or suggest to consumers that the Infringing Product is consistent or compatible with Weight Watchers’ proprietary System, thereby constituting unfair competition and/or false advertising under the Lanham Act.

Defendant Gossain’s Continued Marketing and Sales of Earlier Infringing Products

80. On information and belief, Defendant Gossain has also continued to market, advertise, and sell, without the knowledge, authorization and/or consent of Weight Watchers, his earlier versions of the Infringing Product under a separate and different “d/b/a,” an unincorporated entity entitled “Weight Loss Watchers LLC.”

81. Specifically, as “Weight Loss Watchers LLC,” Gossain markets, advertises, and sells three earlier versions of the Infringing Product under the names: “My Score Plus;” “Ultimate Points Calculator Plus;” and “Ultimate Points Calculator Classic” (the “Old Infringing Products”). Each of the Old Infringing Products are, like the Infringing Product, designed to work with the Apple iOS on Apple iPhones, iPods, and iPads.

82. As with the Infringing Product, and as detailed above, each of the Old Infringing Products is designed to mimic Weight Watchers' System without requiring users to join Weight Watchers, by allowing its users, including the John Doe Defendants, to track and calculate "Points" values assigned to food items and daily activities for purposes of weight loss and management.

83. The Old Infringing Products infringe one or more claims of the '531 Patent, or in the alternative, one or more claims of the '885 Patent, or one or more claims of the '482 Patent, by making, using, offering for sale, and/or selling the patented process and System without the authority of Weight Watchers, and/or by contributing to and/or inducing the infringement of the '531 Patent, the '885 Patent, or the '482 Patent by the John Doe Defendants.

84. Specifically, and without limitation, Defendant Gossain, by making, offering for sale, and selling each of the Old Infringing Products, has:

a. Directly infringed, literally or by equivalents, at least independent claims 1 and 12 of the '885 Patent;

b. Induced and/or contributed to the infringement of at least independent claims 1, 13, and 17 of the '531 Patent by the John Doe Defendants, who through purchase and use of the Infringing Product have directly infringed, literally or by equivalents, such claims; and

c. Induced and/or contributed to the infringement of at least independent claims 1, 6, 11, and 21 of the '482 Patent by the John Doe Defendants, who through purchase and use of the Infringing Product have directly infringed, literally or by equivalents, such claims.

85. As with the Infringing Product, Defendant Gossain as "Weight Loss Watchers LLC" markets, advertises, and sells his Old Infringing Products *via* separate Apple App Store pages for each of the Old Infringing Products (the "Old Infringing Product App Store Sites"). From these Old Infringing Product App Store Sites, customers with iTunes can purchase and download the My Score

Plus app (for US\$2.99), the Ultimate Points Calculator Plus app (for US\$0.99), and the Ultimate Points Calculator Classic (for \$0.99), respectively, for use on their iPhone, iPod, and/or iPad.

86. By selling the Old Infringing Products *via* the Old Infringing Product App Store Sites, Defendant Gossain is infringing, directly (literally or by equivalents) or by inducing or contributing to the direct infringement by the John Doe Defendants, one or more claims of the ‘531 Patent, one or more claims of the ‘885 Patent, or one or more claims of the ‘482 Patent, all as more specifically described and plead herein above.

87. Additionally, without Weight Watchers’ permission, consent, or license, Defendant Gossain has also unlawfully published, used and displayed, and continues to unlawfully publish, use, and display, one or more of Weight Watchers’ Trademarks on each of the Old Infringing Product App Store Sites, thereby infringing those Trademarks.

88. For example, and without limitation, at the top of the Old Infringing Product App Store Site for the My Score Plus app, Defendant Gossain describes the My Score Plus app as a “*Points* Calculator & Weekly Weight Loss and Exercise Manager Plus Daily Food Value Watchers Tracker Journal.” On top of the Old Infringing Product App Store Site for the Ultimate Points Calculator Plus app, Defendant Gossain describes the app as a “*Points* Calculator for Weight Loss and Food Value Nutrition Calculator for *Watchers* WW Diet with Exercise and Food *Points* Calculators.”

89. Further, in the customer reviews section of the Old Infringing Product App Store Site for the My Score Plus app, Defendant Gossain has infringed and continues to infringe Weight Watchers’ Trademarks by publishing purported reviews that use one or more of the Trademarks.

90. One purported review by a customer identified as “sjbrown” claims “I have lost and maintained weight loss on the Weight Watchers system for years ... The last time, I did the whole

system changed because WW was switching to the points plus system ... with this app, I can continue to use the old points system.”

91. Another purported review by a customer called “foxy-brown” says “I’ve lost more weight in the past using the old ww points system and have struggled to find a simple app that allows me to track my points with it.”

92. A third purported review, by “Danielley11,” claims that the purported customer “Just started WW & was hoping this could be a decent tracking device.”

93. Each of the Old Infringing Product App Store Sites also clearly feature, just below the name and description of the app being sold, the statement and/or attribution “By Weight Loss Watchers LLC.” By adopting and using the “d/b/a” Weight Loss Watchers LLC and featuring that designation on the Old Infringing Product App Store Sites, and, without limitation, by publishing the designation elsewhere on the Apple App Store in connection with the Old Infringing Products, Defendant Gossain is infringing Weight Watchers’ registered Trademark WEIGHT WATCHERS by deliberately using a confusingly similar designation – Weight Loss Watchers – to falsely create an association, or communicate an affiliation between Gossain’s Old Infringing Products and Weight Watchers and its Products and System.

94. Each of the statements described above that are found on the Old Infringing Product App Store Sites unlawfully use, and under the Lanham Act infringe, Weight Watchers’ WEIGHT WATCHERS, WW, POINTS, and POINTS PLUS Trademarks by, without limitation, creating an erroneous and confusing false association between Defendant Gossain, the Old Infringing Products, and Weight Watchers’ Products and System, and by creating a likelihood of confusion between Defendant’s Infringing Product and Weight Watchers’ Products and System.

95. Further, in the alternative in the event that the Old Infringing Products are determined not to infringe the ‘531 Patent, the ‘885 Patent, or the ‘482 Patent, these statements, individually and taken together with all of the content published on the Old Infringing Product App Store Sites, falsely and misleadingly claim and/or suggest to consumers that the Old Infringing Products are consistent or compatible with Weight Watchers’ proprietary System, thereby constituting unfair competition and/or false advertising under the Lanham Act.

Summary of Claims

96. By making and selling the Infringing Product, Defendant Gossain is infringing, directly (literally or by equivalents) or by inducing or contributing to the direct infringement by the John Doe Defendants, one or more claims of the ‘531 Patent, one or more claims of the ‘885 Patent, or one or more claims of the ‘482 Patent, all as more specifically described and plead herein above.

97. By making and selling the Old Infringing Products, Defendant Gossain is infringing, directly (literally or by equivalents) or by inducing or contributing to the direct infringement by the John Doe Defendants, one or more claims of the ‘531 Patent, one or more claims of the ‘885 Patent, or one or more claims of the ‘482 Patent, all as more specifically described and plead herein above.

98. Without the authorization or consent of Weight Watchers and after Weight Watchers built up extensive and valuable business and goodwill in connection with Weight Watchers’ Trademarks, Defendant Gossain commenced to use Weight Watchers’ Trademarks, and/or colorable and confusingly similar imitations thereof (the “Infringing Marks”), all as described above, in interstate commerce in connection with the Defendant Website, the Infringing Product Website, the Infringing Product App Store Site, and the Old Infringing Product App Store Sites.

99. Upon information and belief, Defendant was aware of Weight Watchers and Weight Watchers' use of its Trademarks in connection with its Products and System at the time Defendants adopted and began to use the Infringing Marks as described above.

100. Weight Watchers and Defendant are engaged in the business of providing similar products to the same classes of customers, through the same or similar channels of trade.

101. Upon information and belief, Defendant adopted and commenced use of the Infringing Marks with the intent to deceive consumers and to cause confusion among purchasers, for the purpose of benefitting from the goodwill and public recognition associated with Weight Watchers' Trademarks, Products and System, and diverting sales from Weight Watchers to Defendant.

102. The aforementioned acts of Defendant have caused and will continue to cause actual confusion and a likelihood of confusion in the minds of the trade and the consuming public, and will damage Weight Watchers' reputation and goodwill in connection with its Trademarks, its Products, and its System.

103. In the event that the Old Infringing Products are determined not to infringe the '531 Patent, the '885 Patent, or the '482 Patent, Defendant Gossain's statements which unlawfully incorporate the Infringing Marks falsely and misleadingly claim and/or suggest to consumers that the Old Infringing Products are consistent or compatible with Weight Watchers' proprietary System, thereby constituting unfair competition and/or false advertising under the Lanham Act.

COUNT I
PATENT INFRINGEMENT
(U.S. Patent No. 8,382,482 against Defendant Gossain and the John Doe Defendants)
(Infringing Product)

104. Weight Watchers repeats and realleges each allegation contained in the prior paragraphs.

105. Weight Watchers is the owner of the ‘482 Patent, United States Letters Patent No. 8,382,482, which issued on February 26, 2013, for “Processes And Systems For Achieving And Assisting In Improved Nutrition Based On Food Energy Data And Relative Healthfulness Data.”

106. The ‘482 Patent is valid and subsisting.

107. Upon information and belief, the John Doe Defendants have directly infringed and continue to directly infringe, literally or by equivalents, at least independent claims 1, 6, 11, and 21 of the ‘482 Patent under 35 U.S.C. § 271, including, without limitation, by using the patented methods of the ‘482 Patent without the authority of Weight Watchers through their purchase and continued use of, without limitation, the weight tracking features, points calculator, food database, and algorithm of the Infringing Product.

108. On information and belief, prior to commencing the activities complained of in this Complaint, Defendant Gossain, a computer and software developer, was a subscribing customer of Weight Watchers. As such, Gossain had access to all of Weight Watchers’ digital tools, mobile applications, and other Products, and knew that the Products, and Weight Watchers’ POINTS System were patented and proprietary to Weight Watchers.

109. On information and belief, having used, and observed the qualities and functionalities of Weight Watchers digital and other Products, and being a computer and software developer, Gossain determined that he could develop a product that would mimic and/or substitute for, and compete with, Weight Watchers’ Products and POINTS System, and take advantage of a potentially lucrative market, by inducing customers who would otherwise patronize Weight Watchers, or who already were Weight Watchers customers, to use his infringing product instead of Weight Watchers’ POINTS System and Products.

110. Upon information and belief, Defendant Gossain has knowingly encouraged and induced the John Doe Defendants, together with all purchasers and users of the Infringing Product, to utilize methods that infringe at least independent claims 1, 6, 11, and 21 of the '482 Patent by making, marketing, advertising, offering for sale, and selling the Infringing Product to the John Doe Defendants and to all other purchasers and users of the Infringing Product. On information and belief, Defendant Gossain knew that use of the Infringing Product by the John Doe Defendants and other purchasers and users constituted and constitutes patent infringement, and Defendant specifically intended that the John Doe Defendants and other such purchasers and users would purchase and use the Infringing Product, and thus infringe the '482 Patent.

111. Upon information and belief, Defendant Gossain has contributed to the infringement of the '482 Patent by the John Doe Defendants, and other purchasers and users of the Infringing Product, by selling the Infringing Product and thus providing to the John Doe Defendants, who have directly infringed the '482 Patent by purchasing and using the Infringing Product, components especially designed for use in practicing the patented methods of the '482 Patent, specifically and without limitation, the weight tracking features, points calculator, food database, and algorithm of the Infringing Product.

112. The Infringing Product, which comprises and includes, without limitation and among other components, a weight tracker, a points calculator, a food database, and Weight Watchers' computational algorithm or its equivalent, constitutes a material part of the invention of the '482 Patent, and is especially adapted for use in infringement of the patented methods.

113. On information and belief, Defendant Gossain knew, in selling the Infringing Product to the John Doe Defendants and to other purchasers and users of the Infringing Product, that the

combination of components made to comprise the Infringing Product was both patented and constituted patent infringement.

114. On information and belief, Defendant Gossain knew, in selling the Infringing Product to the John Doe Defendants and to other purchasers and users of the Infringing Product, that the combination of components made to comprise the Infringing Product existed solely to permit the Infringing Product to perform the functions of, and to mimic and substitute for, Weight Watchers' POINTS System and Products, and thus had, and have, no substantial non-infringing uses.

115. The Infringing Product is not a staple article or commodity of commerce suitable for substantial non-infringing use.

116. Defendant Gossain does not have a license or permission to make, use, or sell under the '482 Patent.

117. The John Doe Defendants do not have a license or permission to make, use, or sell under the '482 Patent.

118. On information and belief, Defendants are aware of the '482 Patent, yet continue their infringing activities.

119. Upon information and belief, Defendants' conduct and infringement of the '482 Patent is, and has been, willful and deliberate.

120. Defendants' unlawful actions have interfered with Weight Watchers' sales, unfairly diverted sales to Defendants, and have caused Weight Watchers monetary damage.

121. The acts of Defendants have caused irreparable harm and damage to Weight Watchers, and have caused Weight Watchers to suffer monetary damage in an amount thus far not determined.

122. Based upon Defendants' acts of willful infringement, rendering this an exceptional case, Weight Watchers is entitled to injunctive relief, monetary damages, treble damages, costs, and attorneys' fees.

COUNT II
PATENT INFRINGEMENT
(U.S. Patent No. 8,382,482 against Defendant Gossain and the John Doe Defendants)
(Old Infringing Products)

123. Weight Watchers repeats and realleges each allegation contained in the prior paragraphs.

124. Weight Watchers is the owner of the '482 Patent, United States Letters Patent No. 8,382,482, which issued on February 26, 2013, for "Processes And Systems For Achieving And Assisting In Improved Nutrition Based On Food Energy Data And Relative Healthfulness Data."

125. The '482 Patent is valid and subsisting.

126. Upon information and belief, the John Doe Defendants have directly infringed and continue to directly infringe, literally or by equivalents, at least independent claims 1, 6, 11, and 21 of the '482 Patent under 35 U.S.C. § 271, including, without limitation, by using the patented methods of the '482 Patent without the authority of Weight Watchers through their purchase and continued use of, without limitation, the weight tracking features, points calculator, and algorithm of each or any of the Old Infringing Products.

127. On information and belief, prior to commencing the activities complained of in this Complaint, Defendant Gossain, a computer and software developer, was a subscribing customer of Weight Watchers. As such, Gossain had access to all of Weight Watchers' digital tools, mobile applications, and other Products, and knew that the Products, and Weight Watchers' POINTS System were patented and proprietary to Weight Watchers.

128. On information and belief, having used, and observed the qualities and functionalities of Weight Watchers digital and other Products, and being a computer and software developer, Gossain determined that he could develop a product that would mimic and/or substitute for, and compete with, Weight Watchers' Products and POINTS System, and take advantage of a potentially lucrative market, by inducing customers who would otherwise patronize Weight Watchers, or who already were Weight Watchers customers, to use his infringing products instead of Weight Watchers' POINTS System and Products.

129. Upon information and belief, Defendant Gossain has knowingly encouraged and induced the John Doe Defendants, together with all purchasers and users of each or any of the Old Infringing Products, to utilize methods that infringe at least independent claims 1, 6, 11, and 21 of the '482 Patent by making, marketing, advertising, offering for sale, and selling each of the Old Infringing Products to the John Doe Defendants and to all other purchasers and users of each or any of the Old Infringing Products. On information and belief, Defendant Gossain knew that use of each of the Old Infringing Products by the John Doe Defendants and other purchasers and users constituted and constitutes patent infringement, and Defendant specifically intended that the John Doe Defendants and other such purchasers and users would purchase and use each or any of the Old Infringing Products, and thus infringe the '482 Patent.

130. Upon information and belief, Defendant Gossain has contributed to the infringement of the '482 Patent by the John Doe Defendants, and other purchasers and users of each or any of the Old Infringing Products, by selling each of the Old Infringing Products and thus providing to the John Doe Defendants, who have directly infringed the '482 Patent by purchasing and using each or any of the Old Infringing Products, components especially designed for use in practicing the

patented methods of the '482 Patent, specifically and without limitation, the weight tracking features, points calculator, and algorithm of the Infringing Product.

131. Each of the Old Infringing Products, which comprises and includes, without limitation and among other components, a weight tracker, a points calculator, and Weight Watchers' computational algorithm or its equivalent, constitutes a material part of the invention of the '482 Patent, and is especially adapted for use in infringement of the patented methods.

132. On information and belief, Defendant Gossain knew, in selling each of the Old Infringing Products to the John Doe Defendants and to other purchasers and users of each or any of the Old Infringing Products, that the combination of components made to comprise each of the Old Infringing Products was both patented and constituted patent infringement.

133. On information and belief, Defendant Gossain knew, in selling each of the Old Infringing Products to the John Doe Defendants and to other purchasers and users of each or any of the Old Infringing Products, that the combination of components made to comprise each of the Old Infringing Products existed solely to permit each of the Old Infringing Products to perform the functions of, and to mimic and substitute for, Weight Watchers' POINTS System and Products, and thus had, and have, no substantial non-infringing uses.

134. None of the Old Infringing Products is a staple article or commodity of commerce suitable for substantial non-infringing use.

135. Defendant Gossain does not have a license or permission to make, use, or sell under the '482 Patent.

136. The John Doe Defendants do not have a license or permission to make, use, or sell under the '482 Patent.

137. On information and belief, Defendants are aware of the ‘482 Patent, yet continue their infringing activities.

138. Upon information and belief, Defendants’ conduct and infringement of the ‘482 Patent is and has been willful and deliberate.

139. Defendants’ unlawful actions have interfered with Weight Watchers’ sales, unfairly diverted sales to Defendants, and have caused Weight Watchers monetary damage.

140. The acts of Defendants have caused irreparable harm and damage to Weight Watchers, and have caused Weight Watchers to suffer monetary damage in an amount thus far not determined.

141. Based upon Defendants’ acts of willful infringement, rendering this an exceptional case, Weight Watchers is entitled to injunctive relief, monetary damages, treble damages, costs, and attorneys’ fees.

COUNT III
PATENT INFRINGEMENT
(U.S. Patent No. 6,878,885 Against Defendant Gossain and the John Doe Defendants)
(Infringing Product)

142. Weight Watchers repeats and realleges each allegation contained in the prior paragraphs.

143. Weight Watchers is the owner of the ‘885 Patent, United States Letters Patent No. 6,878,885, which issued on April 12, 2005, for its “Process For Controlling Body Weight.”

144. The ‘885 Patent is valid and subsisting.

145. Upon information and belief, and in the alternative to infringement of the ‘442 Patent claimed in Count I, above, Defendant Gossain has directly infringed and continues to directly infringe, literally or by equivalents, at least independent claims 1 and 12 of the ‘885 Patent, under 35 U.S.C. § 271, including but not limited to by making, using, offering for sale, selling, and/or

importing the patented methods of the '885 Patent as embodied in, without limitation, the weight tracking features, points calculator, food database, and algorithm of the Infringing Product, without the authority of Weight Watchers.

146. Upon information and belief, the John Doe Defendants have directly infringed and continue to directly infringe, literally or by equivalents, at least independent claims 1, 7, and 12 of the '885 Patent under 35 U.S.C. § 271, including, without limitation, by using the patented methods of the '885 Patent without the authority of Weight Watchers through their purchase and continued use of, without limitation, the weight tracking features, points calculator, food database, and algorithm of the Infringing Product.

147. On information and belief, prior to commencing the activities complained of in this Complaint, Defendant Gossain, a computer and software developer, was a subscribing customer of Weight Watchers. As such, Gossain had access to all of Weight Watchers' digital tools, mobile applications, and other Products, and knew that the Products, and Weight Watchers' POINTS System were patented and proprietary to Weight Watchers.

148. On information and belief, having used, and observed the qualities and functionalities of Weight Watchers digital and other Products, and being a computer and software developer, Gossain determined that he could develop a product that would mimic and/or substitute for, and compete with, Weight Watchers' Products and POINTS System, and take advantage of a potentially lucrative market, by inducing customers who would otherwise patronize Weight Watchers, or who already were Weight Watchers customers, to use his infringing product instead of Weight Watchers' POINTS System and Products.

149. Upon information and belief, Defendant Gossain has knowingly encouraged and induced the John Doe Defendants, together with all purchasers and users of the Infringing Product,

to utilize methods that infringe at least independent claims 1, 6, 11, and 21 of the '482 Patent by making, marketing, advertising, offering for sale, and selling the Infringing Product to the John Doe Defendants and to all other purchasers and users of the Infringing Product. On information and belief, Defendant Gossain knew that use of the Infringing Product by the John Doe Defendants and other purchasers and users constituted and constitutes patent infringement, and Defendant specifically intended that the John Doe Defendants and other such purchasers and users would purchase and use the Infringing Product, and thus infringe the '482 Patent.

150. Upon information and belief, Defendant Gossain has knowingly encouraged and induced the John Doe Defendants, together with all purchasers and users of the Infringing Product, to utilize methods that infringe at least independent claim 7 of the '885 Patent by making, marketing, advertising, offering for sale, and selling the Infringing Product to the John Doe Defendants and to all other purchasers and users of the Infringing Product. On information and belief, Defendant Gossain knew that use of the Infringing Product by the John Doe Defendants and other purchasers and users constituted and constitutes patent infringement, and Defendant specifically intended that the John Doe Defendants and other such purchasers and users would purchase and use the Infringing Product in order to infringe the '885 Patent.

151. Upon information and belief, Defendant Gossain has contributed to the infringement of the '885 Patent by the John Doe Defendants, and other purchasers and users of the Infringing Product, by selling the Infringing Product and thus providing to the John Doe Defendants, who have directly infringed the '885 Patent by purchasing and using the Infringing Product, components especially designed for use in practicing the patented methods of the '885 Patent, specifically and without limitation, the weight tracking features, points calculator, food database, and algorithm of the Infringing Product.

152. The Infringing Product, which comprises and includes, without limitation and among other components, a weight tracker, a points calculator, a food database, and Weight Watchers' computational algorithm or its equivalent, constitutes a material part of the invention of the '885 Patent, and is especially adapted for use in infringement of the patented methods.

153. On information and belief, Defendant Gossain knew, in selling the Infringing Product to the John Doe Defendants and to other purchasers and users of the Infringing Product, that the combination of components made to comprise the Infringing Product was both patented and constituted patent infringement.

154. On information and belief, Defendant Gossain knew, in selling the Infringing Product to the John Doe Defendants and to other purchasers and users of the Infringing Product, that the combination of components made to comprise the Infringing Product existed solely to permit the Infringing Product to perform the functions of, and to mimic and substitute for, Weight Watchers' POINTS System and Products, and thus had, and have, no substantial non-infringing uses.

155. The Infringing Product is not a staple article or commodity of commerce suitable for substantial non-infringing use.

156. Defendant Gossain does not have a license or permission to make, use, or sell under the '885 Patent.

157. The John Doe Defendants do not have a license or permission to make, use, or sell under the '885 Patent.

158. On information and belief, Defendants are aware of the '885 Patent, yet continue their infringing activities.

159. Upon information and belief, Defendants' conduct and infringement of the '885 Patent is and has been willful and deliberate.

160. Defendants' unlawful actions have interfered with Weight Watchers' sales, unfairly diverted sales to Defendants, and have caused Weight Watchers monetary damage.

161. The acts of Defendants have caused irreparable harm and damage to Weight Watchers, and have caused Weight Watchers to suffer monetary damage in an amount thus far not determined.

162. Based upon Defendants' acts of willful infringement, rendering this an exceptional case, Weight Watchers is entitled to injunctive relief, monetary damages, treble damages, costs, and attorneys' fees.

COUNT IV
PATENT INFRINGEMENT
(U.S. Patent No. 6,878,885 Against Defendant Gossain and the John Doe Defendants)
(Old Infringing Products)

163. Weight Watchers repeats and realleges each allegation contained in the prior paragraphs.

164. Weight Watchers is the owner of the '885 Patent, United States Letters Patent No. 6,878,885, which issued on April 12, 2005, for its "Process For Controlling Body Weight."

165. The '885 Patent is valid and subsisting.

166. Upon information and belief, and in the alternative to infringement of the '442 Patent claimed in Count II, above, Defendant Gossain has directly infringed and continues to directly infringe, literally or by equivalents, at least independent claims 1 and 12 of the '885 Patent, under 35 U.S.C. § 271, including but not limited to by making, using, offering for sale, selling, and/or importing the patented methods of the '885 Patent as embodied in, without limitation, the weight tracking features, points calculator, and algorithm of each of the Old Infringing Products, without the authority of Weight Watchers.

167. Upon information and belief, the John Doe Defendants have directly infringed and continue to directly infringe, literally or by equivalents, at least independent claims 1, 7, and 12 of the '885 Patent under 35 U.S.C. § 271, including, without limitation, by using the patented methods of the '885 Patent without the authority of Weight Watchers through their purchase and continued use of, without limitation, the weight tracking features, points calculator, and algorithm of each or any of the Old Infringing Products.

168. On information and belief, prior to commencing the activities complained of in this Complaint, Defendant Gossain, a computer and software developer, was a subscribing customer of Weight Watchers. As such, Gossain had access to all of Weight Watchers' digital tools, mobile applications, and other Products, and knew that the Products, and Weight Watchers' POINTS System were patented and proprietary to Weight Watchers.

169. On information and belief, having used, and observed the qualities and functionalities of Weight Watchers digital and other Products, and being a computer and software developer, Gossain determined that he could develop a product or products that would mimic and/or substitute for, and compete with, Weight Watchers' Products and POINTS System, and take advantage of a potentially lucrative market, by inducing customers who would otherwise patronize Weight Watchers, or who already were Weight Watchers customers, to use his infringing products instead of Weight Watchers' POINTS System and Products.

170. Upon information and belief, Defendant Gossain has knowingly encouraged and induced the John Doe Defendants, together with all purchasers and users of each or any of the Old Infringing Products, to utilize methods that infringe at least independent claims 1, 6, 11, and 21 of the '482 Patent by making, marketing, advertising, offering for sale, and selling each or any of the Old Infringing Products to the John Doe Defendants and to all other purchasers and users of each or

any of the Old Infringing Products. On information and belief, Defendant Gossain knew that use of each of the Old Infringing Products by the John Doe Defendants and other purchasers and users constituted and constitutes patent infringement, and Defendant specifically intended that the John Doe Defendants and other such purchasers and users would purchase and use each or any of the Old Infringing Products, and thus infringe the '482 Patent.

171. Upon information and belief, Defendant Gossain has knowingly encouraged and induced the John Doe Defendants, together with all purchasers and users of each or any of the Old Infringing Products, to utilize methods that infringe at least independent claim 7 of the '885 Patent by making, marketing, advertising, offering for sale, and selling each of the Old Infringing Products to the John Doe Defendants and to all other purchasers and users of each or any of the Old Infringing Products. On information and belief, Defendant Gossain knew that use of each of the Old Infringing Products by the John Doe Defendants and other purchasers and users constituted and constitutes patent infringement, and Defendant specifically intended that the John Doe Defendants and other such purchasers and users would purchase and use each or any of the Old Infringing Products in order to infringe the '885 Patent.

172. Upon information and belief, Defendant Gossain has contributed to the infringement of the '885 Patent by the John Doe Defendants, and other purchasers and users of each or any of the Old Infringing Products, by selling each of the Old Infringing Products and thus providing to the John Doe Defendants, who have directly infringed the '885 Patent by purchasing and using each or any of the Old Infringing Products, components especially designed for use in practicing the patented methods of the '885 Patent, specifically and without limitation, the weight tracking features, points calculator, and algorithm of each or any of the Old Infringing Products.

173. Each of the Old Infringing Products, which comprises and includes, without limitation and among other components, a weight tracker, a points calculator, and Weight Watchers' computational algorithm or its equivalent, constitutes a material part of the invention of the '885 Patent, and is especially adapted for use in infringement of the patented methods.

174. On information and belief, Defendant Gossain knew, in selling each or any of the Old Infringing Products to the John Doe Defendants and to other purchasers and users of each or any of the Old Infringing Products, that the combination of components made to comprise each of the Old Infringing Products was both patented and constituted patent infringement.

175. On information and belief, Defendant Gossain knew, in selling each or any of the Old Infringing Products to the John Doe Defendants and to other purchasers and users of each of the Old Infringing Products, that the combination of components made to comprise each of the Old Infringing Products existed solely to permit each of the Old Infringing Products to perform the functions of, and to mimic and substitute for, Weight Watchers' POINTS System and Products, and thus had, and have, no substantial non-infringing uses.

176. None of the Infringing Product is a staple article or commodity of commerce suitable for substantial non-infringing use.

177. Defendant Gossain does not have a license or permission to make, use, or sell under the '885 Patent.

178. The John Doe Defendants do not have a license or permission to make, use, or sell under the '885 Patent.

179. On information and belief, Defendants are aware of the '885 Patent, yet continue their infringing activities.

180. Upon information and belief, Defendants' conduct and infringement of the '885 Patent is and has been willful and deliberate.

181. Defendants' unlawful actions have interfered with Weight Watchers' sales, unfairly diverted sales to Defendants, and have caused Weight Watchers monetary damage.

182. The acts of Defendants have caused irreparable harm and damage to Weight Watchers, and have caused Weight Watchers to suffer monetary damage in an amount thus far not determined.

183. Based upon Defendants' acts of willful infringement, rendering this an exceptional case, Weight Watchers is entitled to injunctive relief, monetary damages, treble damages, costs, and attorneys' fees.

COUNT V
PATENT INFRINGEMENT
(U.S. Patent No. 6,040,531 Against Defendant Gossain and the John Doe Defendants)
(Infringing Product)

184. Weight Watchers repeats and realleges each allegation contained in the prior paragraphs.

185. Weight Watchers is the owner of the '531 Patent, United States Letters Patent No. 6,040,531, which issued on March 21, 2000, for its "Process For Controlling Body Weight."

186. The '531 Patent is valid and subsisting.

187. Upon information and belief, and in the alternative to infringement of the '442 Patent claimed in Count I, and/or the '885 Patent claimed in Count III, above, the John Doe Defendants have directly infringed and continue to directly infringe, literally or by equivalents, at least independent claims 1, 13, and 17 of the '531 Patent under 35 U.S.C. § 271, including, without limitation, by using the patented methods of the '531 Patent without the authority of Weight

Watchers through their purchase and continued use of, without limitation, the weight tracking features, points calculator, food database, and algorithm of the Infringing Product.

188. On information and belief, prior to commencing the activities complained of in this Complaint, Defendant Gossain, a computer and software developer, was a subscribing customer of Weight Watchers. As such, Gossain had access to all of Weight Watchers' digital tools, mobile applications, and other Products, and knew that the Products, and Weight Watchers' POINTS System were patented and proprietary to Weight Watchers.

189. On information and belief, having used, and observed the qualities and functionalities of Weight Watchers digital and other Products, and being a computer and software developer, Gossain determined that he could develop a product that would mimic and/or substitute for, and compete with, Weight Watchers' Products and POINTS System, and take advantage of a potentially lucrative market, by inducing customers who would otherwise patronize Weight Watchers, or who already were Weight Watchers customers, to use his infringing product instead of Weight Watchers' POINTS System and Products.

190. Upon information and belief, Defendant Gossain has knowingly encouraged and induced the John Doe Defendants, together with all purchasers and users of the Infringing Product, to utilize methods that infringe at least independent claims 1, 13, and 17 of the '531 Patent by making, marketing, advertising, offering for sale, and selling the Infringing Product to the John Doe Defendants and to all other purchasers and users of the Infringing Product. On information and belief, Defendant Gossain knew that use of the Infringing Product by the John Doe Defendants and other purchasers and users constituted and constitutes patent infringement, and Defendant specifically intended that the John Doe Defendants and other such purchasers and users would purchase and use the Infringing Product in order to infringe the '531 Patent.

191. Upon information and belief, Defendant Gossain has contributed to the infringement of the '531 Patent by the John Doe Defendants, and other purchasers and users of the Infringing Product, by selling the Infringing Product and thus providing to the John Doe Defendants, who have directly infringed the '531 Patent by purchasing and using the Infringing Product, components especially designed for use in practicing the patented methods of the '531 Patent, specifically and without limitation, the weight tracking features, points calculator, food database, and algorithm of the Infringing Product.

192. The Infringing Product, which comprises and includes, without limitation and among other components, a weight tracker, a points calculator, a food database, and Weight Watchers' computational algorithm or its equivalent, constitutes a material part of the invention of the '531 Patent, and is especially adapted for use in infringement of the patented methods.

193. On information and belief, Defendant Gossain knew, in selling the Infringing Product to the John Doe Defendants and to other purchasers and users of the Infringing Product, that the combination of components made to comprise the Infringing Product was both patented and constituted patent infringement.

194. On information and belief, Defendant Gossain knew, in selling the Infringing Product to the John Doe Defendants and to other purchasers and users of the Infringing Product, that the combination of components made to comprise the Infringing Product existed solely to permit the Infringing Product to perform the functions of, and to mimic and substitute for, Weight Watchers' POINTS System and Products, and thus had, and have, no substantial non-infringing uses.

195. The Infringing Product is not a staple article or commodity of commerce suitable for substantial non-infringing use.

196. Defendant Gossain does not have a license or permission to make, use, or sell under the ‘531 Patent.

197. The John Doe Defendants do not have a license or permission to make, use, or sell under the ‘531 Patent.

198. On information and belief, Defendants are aware of the ‘531 Patent, yet continue their infringing activities.

199. Upon information and belief, Defendants’ conduct and infringement of the ‘531 Patent is and has been willful and deliberate.

200. Defendants’ unlawful actions have interfered with Weight Watchers’ sales, unfairly diverted sales to Defendants, and have caused Weight Watchers monetary damage.

201. The acts of Defendants have caused irreparable harm and damage to Weight Watchers, and have caused Weight Watchers to suffer monetary damage in an amount thus far not determined.

202. Based upon Defendants’ acts of willful infringement, rendering this an exceptional case, Weight Watchers is entitled to injunctive relief, monetary damages, treble damages, costs, and attorneys’ fees.

COUNT VI
PATENT INFRINGEMENT
(U.S. Patent No. 6,040,531 Against Defendant Gossain and the John Doe Defendants)
(Old Infringing Products)

203. Weight Watchers repeats and realleges each allegation contained in the prior paragraphs.

204. Weight Watchers is the owner of the ‘531 Patent, United States Letters Patent No. 6,040,531, which issued on March 21, 2000, for its “Process For Controlling Body Weight.”

205. The ‘531 Patent is valid and subsisting.

206. Upon information and belief, and in the alternative to infringement of the ‘442 Patent claimed in Count II, and/or the ‘885 Patent claimed in Count IV, above, the John Doe Defendants have directly infringed and continue to directly infringe, literally or by equivalents, at least independent claims 1, 13, and 17 of the ‘531 Patent under 35 U.S.C. § 271, including, without limitation, by using the patented methods of the ‘531 Patent without the authority of Weight Watchers through their purchase and continued use of, without limitation, the weight tracking features, points calculator, and algorithm of each or any of the Old Infringing Products.

207. On information and belief, prior to commencing the activities complained of in this Complaint, Defendant Gossain, a computer and software developer, was a subscribing customer of Weight Watchers. As such, Gossain had access to all of Weight Watchers’ digital tools, mobile applications, and other Products, and knew that the Products, and Weight Watchers’ POINTS System were patented and proprietary to Weight Watchers.

208. On information and belief, having used, and observed the qualities and functionalities of Weight Watchers digital and other Products, and being a computer and software developer, Gossain determined that he could develop a product or products that would mimic and/or substitute for, and compete with, Weight Watchers’ Products and POINTS System, and take advantage of a potentially lucrative market, by inducing customers who would otherwise patronize Weight Watchers, or who already were Weight Watchers customers, to use his infringing products instead of Weight Watchers’ POINTS System and Products.

209. Upon information and belief, Defendant Gossain has knowingly encouraged and induced the John Doe Defendants, together with all purchasers and users of each or any of the Old Infringing Products, to utilize methods that infringe at least independent claims 1, 13, and 17 of the ‘531 Patent by making, marketing, advertising, offering for sale, and selling each or any of the Old

Infringing Products to the John Doe Defendants and to all other purchasers and users of each or any of the Old Infringing Products. On information and belief, Defendant Gossain knew that use of each of the Old Infringing Products by the John Doe Defendants and other purchasers and users constituted and constitutes patent infringement, and Defendant specifically intended that the John Doe Defendants and other such purchasers and users would purchase and use each or any of the Old Infringing Products in order to infringe the '531 Patent.

210. Upon information and belief, Defendant Gossain has contributed to the infringement of the '531 Patent by the John Doe Defendants, and other purchasers and users of each or any of the Old Infringing Products, by selling each of the Old Infringing Products and thus providing to the John Doe Defendants, who have directly infringed the '531 Patent by purchasing and using each or any of the Old Infringing Products, components especially designed for use in practicing the patented methods of the '531 Patent, specifically and without limitation, the weight tracking features, points calculator, and algorithm of each or any of the Old Infringing Products.

211. Each of the Old Infringing Products, which comprises and includes, without limitation and among other components, a weight tracker, a points calculator, and Weight Watchers' computational algorithm or its equivalent, constitutes a material part of the invention of the '531 Patent, and is especially adapted for use in infringement of the patented methods.

212. On information and belief, Defendant Gossain knew, in selling each or any of the Old Infringing Products to the John Doe Defendants and to other purchasers and users of each or any of the Old Infringing Products, that the combination of components made to comprise each of the Old Infringing Products was both patented and constituted patent infringement.

213. On information and belief, Defendant Gossain knew, in selling each or any of the Old Infringing Products to the John Doe Defendants and to other purchasers and users of each or any of

the Old Infringing Products, that the combination of components made to comprise each of the Old Infringing Products existed solely to permit each of the Old Infringing Products to perform the functions of, and to mimic and substitute for, Weight Watchers' POINTS System and Products, and thus had, and have, no substantial non-infringing uses.

214. None of the Old Infringing Products is a staple article or commodity of commerce suitable for substantial non-infringing use.

215. Defendant Gossain does not have a license or permission to make, use, or sell under the '531 Patent.

216. The John Doe Defendants do not have a license or permission to make, use, or sell under the '531 Patent.

217. On information and belief, Defendants are aware of the '531 Patent, yet continue their infringing activities.

218. Upon information and belief, Defendants' conduct and infringement of the '531 Patent is and has been willful and deliberate.

219. Defendants' unlawful actions have interfered with Weight Watchers' sales, unfairly diverted sales to Defendants, and have caused Weight Watchers monetary damage.

220. The acts of Defendants have caused irreparable harm and damage to Weight Watchers, and have caused Weight Watchers to suffer monetary damage in an amount thus far not determined.

221. Based upon Defendants' acts of willful infringement, rendering this an exceptional case, Weight Watchers is entitled to injunctive relief, monetary damages, treble damages, costs, and attorneys' fees.

COUNT VII
REGISTERED TRADEMARK INFRINGEMENT (LANHAM ACT § 32)
Against Defendant Gossain
(WEIGHT WATCHERS, WW, POINTS, POINTS PLUS)

222. Weight Watchers repeats and realleges each allegation contained in the prior paragraphs.

223. Under 15 U.S.C. §1057(b), the Trademark Registrations constitute *prima facie* evidence of the validity of the Registered Trademarks WEIGHT WATCHERS, WW, POINTS, and POINTS PLUS, and of the registration of the Registered Trademarks, of Weight Watchers' ownership of the Registered Trademarks, and of Weight Watchers' exclusive right to use the Registered Trademarks in commerce on or in connection with the goods or services specified in the certificates.

224. The Trademark Registrations for WEIGHT WATCHERS and POINTS are incontestable.

225. Defendant Gossain's use and display of the Infringing Marks on the Defendant Website, the Infringing Product Website, the Infringing Product App Store Site, and the Old Infringing Product App Store Sites (all as defined above) creates a likelihood of confusion with Weight Watchers, the Registered Trademarks, and with Weight Watchers' offering of services and sales of its Products and System using its Registered Trademarks.

226. The Infringing Marks are confusingly similar to the Registered Trademarks in sight, sound and connotation.

227. The Registered Trademarks are distinct and strong trademarks, based on both their inherent strength and their commercial strength.

228. Weight Watchers' Products and System are goods and services which are sold, distributed, furnished and/or advertised to the same or similar classes of purchasers as Defendant Gossain's Infringing Product and/or Old Infringing Products.

229. Upon information and belief, Defendant was aware of Weight Watchers and of Weight Watchers' use of its Registered Trademarks prior to the time Defendant selected and commenced using the Infringing Marks.

230. Upon information and belief, Defendant adopted and used the Infringing Marks with the intent of misleading consumers into believing that the Infringing Product and/or the Old Infringing Products were associated with and/or approved or sponsored by Weight Watchers and Weight Watchers' System, thereby causing confusion among consumers, with the purpose of benefitting from Weight Watchers' reputation and goodwill.

231. Defendant's conduct constitutes willful trademark infringement.

232. On information and belief, as a result of Defendant's conduct, actual confusion has occurred.

233. As a result of Defendant's conduct, a strong likelihood of confusion, mistake, or deception has been created, and many persons familiar with Weight Watchers and the Registered Trademarks, and their reputation and favorable goodwill, are likely to purchase Defendant's Infringing Product, and/or each or any of Defendant's Old Infringing Products, in the mistaken belief that Defendant is affiliated with or sponsored by Weight Watchers and/or that the mobile applications sold by Defendant originate from Weight Watchers or are provided by or otherwise authorized or sponsored by Weight Watchers.

234. By virtue of Defendant's conduct, Defendant is engaged in infringement of the Registered Trademarks, in violation of the Lanham Act § 32, 15 U.S.C. § 1114(1), by using marks wherein such use is likely to cause confusion, or to cause mistake or to deceive.

235. Defendant intends to make, and have made, unlawful gains and profits from such unlawful infringement and, by reason thereof, Weight Watchers has been and will be deprived of rights and profits which otherwise would have come to Weight Watchers, but for such infringements.

236. Weight Watchers has no adequate remedy at law for the injury alleged in this Count. The injury is intangible in nature and not capable of being fully measured or valued in terms of money damages. Further, the injury is of a continuing nature and will continue to be suffered so long as Defendant continues his wrongful conduct.

237. Defendant's acts are willful, malicious and wanton and Defendant will continue his acts of willful infringement unless enjoined by this Court.

238. Notwithstanding the inadequacy of and the difficulty of presently fully ascertaining Weight Watchers' monetary damages caused by Defendant's wrongful conduct, Weight Watchers is informed and believes and, based upon such information and belief, alleges that said conduct has resulted in irreparable, direct and proximate damages to Weight Watchers. Weight Watchers seeks leave of this Court to amend its complaint to allege the full nature and extent of said monetary damages, if and when, and to the extent the damages are ascertained.

COUNT VIII
REGISTERED TRADEMARK INFRINGEMENT (LANHAM ACT § 32)
Against Defendant Gossain
(WEIGHT WATCHERS)

239. Weight Watchers repeats and realleges each allegation contained in the prior paragraphs.

240. Under 15 U.S.C. §1057(b), Weight Watchers' Trademark Registration for its Trademark WEIGHT WATCHERS constitutes *prima facie* evidence of the validity of the Registered Trademark WEIGHT WATCHERS, of the registration of the Registered Trademark WEIGHT WATCHERS, of Weight Watchers' ownership of the Registered Trademark WEIGHT WATCHERS, and of Weight Watchers' exclusive right to use the Registered Trademark WEIGHT WATCHERS in commerce on or in connection with the goods or services specified in the certificate.

241. The Trademark Registration for WEIGHT WATCHERS is incontestable.

242. Defendant Gossain's use and display of the Infringing Mark "Weight Loss Watchers" on each of the Old Infringing Product App Store Sites and elsewhere on the Apple App Store in connection with the advertisement, offer for sale, and sale of each of the Old Infringing Products creates a likelihood of confusion with Weight Watchers, the Registered Trademark WEIGHT WATCHERS, and with Weight Watchers' offering of services and sales of its Products and System in connection with its Registered Trademark WEIGHT WATCHERS.

243. The Infringing Mark "Weight Loss Watchers" is confusingly similar to the Registered Trademark WEIGHT WATCHERS in sight, sound and connotation.

244. The Registered Trademark WEIGHT WATCHERS is a distinct and strong trademark, based on both its inherent strength and its commercial strength.

245. Weight Watchers' Products and System are goods and services which are sold, distributed, furnished and/or advertised to the same or similar classes of purchasers as Defendants' Infringing Products.

246. Upon information and belief, Defendant was aware of Weight Watchers and of Weight Watchers' use of its Registered Trademark WEIGHT WATCHERS prior to the time Defendant selected and commenced using the Infringing Mark "Weight Loss Watchers."

247. Upon information and belief, Defendant adopted and used the Infringing Mark “Weight Loss Watchers” with the intent of misleading consumers into believing that the Old Infringing Products were associated with and/or approved or sponsored by Weight Watchers and Weight Watchers’ System, thereby causing confusion among consumers, with the purpose of benefitting from Weight Watchers’ reputation and goodwill.

248. Defendant’s conduct constitutes willful trademark infringement.

249. On information and belief, as a result of Defendant’s conduct, actual confusion has occurred.

250. As a result of Defendant’s conduct, a strong likelihood of confusion, mistake, or deception has been created, and many persons familiar with Weight Watchers and the Registered Trademark WEIGHT WATCHERS, and their reputation and favorable goodwill, are likely to purchase each or any of Defendant’s Old Infringing Products in the mistaken belief that Defendant is affiliated with or sponsored by Weight Watchers and/or that the mobile applications sold by Defendant originate from Weight Watchers or are provided by or otherwise authorized or sponsored by Weight Watchers.

251. By virtue of Defendant’s conduct, Defendant is engaged in infringement of the Registered Trademarks, in violation of the Lanham Act § 32, 15 U.S.C. § 1114(1), by using marks wherein such use is likely to cause confusion, or to cause mistake or to deceive.

252. Defendant intends to make, and have made, unlawful gains and profits from such unlawful infringement and, by reason thereof, Weight Watchers has been and will be deprived of rights and profits which otherwise would have come to Weight Watchers, but for such infringements.

253. Weight Watchers has no adequate remedy at law for the injury alleged in this Count. The injury is intangible in nature and not capable of being fully measured or valued in terms of money damages. Further, the injury is of a continuing nature and will continue to be suffered so long as Defendant continues his wrongful conduct.

254. Defendant's acts are willful, malicious and wanton and Defendant will continue his acts of willful infringement unless enjoined by this Court.

255. Notwithstanding the inadequacy of and the difficulty of presently fully ascertaining Weight Watchers' monetary damages caused by Defendant's wrongful conduct, Weight Watchers is informed and believes and, based upon such information and belief, alleges that said conduct has resulted in irreparable, direct and proximate damages to Weight Watchers. Weight Watchers seeks leave of this Court to amend its complaint to allege the full nature and extent of said monetary damages, if and when, and to the extent the damages are ascertained.

COUNT IX
TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN,
FALSE DESCRIPTION, AND UNFAIR COMPETITION (LANHAM ACT § 43(a))
(Against Defendant Gossain)

256. Weight Watchers repeats and realleges each and every allegation contained in the prior paragraphs hereto, and the same are incorporated herein and made a part hereof.

257. Weight Watcher's Trademarks, WEIGHT WATCHERS, WW, POINTS, and POINTS PLUS are inherently distinctive.

258. The Trademarks have acquired distinctiveness and a secondary meaning.

259. Defendant's use and display of the Infringing Marks on the Defendant Website, the Infringing Product Website, the Infringing Product App Store Site, and each of the Old Infringing Product App Store Sites creates the likelihood of confusion with Weight Watchers, the Trademarks,

and with Weight Watchers' offering and sales of its Products and System used in connection with its Trademarks.

260. The Infringing Marks are confusingly similar to the Trademarks in sight, sound and connotation.

261. The Trademarks are distinctive and strong trademarks, based on both inherent strength and commercial strength.

262. Weight Watchers' Products and System are goods and services which are sold, distributed, furnished and/or advertised to the same or similar classes of purchasers as Defendant's Infringing Products and each of Defendant's Old Infringing Products.

263. Upon information and belief, Defendant was aware of Weight Watchers and of Weight Watchers' use of its Trademarks prior to the time Defendant selected and commenced using the Infringing Marks.

264. On information and belief, based upon, without limitation, the similarity of the parties' respective marks, and Defendant's prior knowledge of Weight Watchers and Weight Watchers' use of its Trademarks, Defendant adopted and used the Infringing Marks with the intent of causing confusion among consumers with the purpose of benefitting from Weight Watchers' reputation and goodwill, and Defendant's conduct constitutes willful trademark infringement and unfair competition.

265. On information and belief, as a result of Defendant's conduct, actual confusion has occurred.

266. The acts and conduct of Defendant have been and are willful, unfair, untrue and deceptive, in that they intend to mislead, deceive and confuse, and have had and continue to have the

result of misleading, deceiving and confusing the public to believe that Defendant and/or the Infringing Products are affiliated with, sponsored or controlled by Weight Watchers.

267. As a consequence, Defendant's attempt to trade upon, and gain public acceptance and other benefits from Weight Watchers' favorable reputation, which reputation has accordingly been placed at risk by Defendant's illegal acts and conduct.

268. The acts of Defendant constitutes infringement of the Trademarks, and the use of a false designations of origin, false representations, and unfair competition, by inducing the erroneous belief that Defendant and/or the Infringing Marks are in some manner affiliated with, originate from, or are sponsored by Weight Watchers, and by misrepresenting the nature and/or origin of Defendant's goods and services, are all in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a).

269. The acts of Defendant have caused irreparable harm and damage to Weight Watchers and will continue to cause irreparable harm to Weight Watchers, and have caused and will continue to cause Weight Watchers to suffer monetary damage in an amount thus far not determined.

270. Weight Watchers has no adequate remedy at law for the injury alleged in this count, and said injury is, in part, intangible in nature and not capable of being fully measured or valued entirely in terms of monetary damages.

271. Notwithstanding the inadequacy of and the difficulty of presently fully ascertaining Weight Watchers's monetary damages caused by Defendant's wrongful conduct, Weight Watchers is informed and believes and, based upon such information and belief, alleges that said conduct has resulted in irreparable, direct and proximate damages to Weight Watchers. Weight Watchers seeks leave of this Court to amend its complaint to allege the full nature and extent of said monetary damages if, when and to the extent the damages are ascertained.

COUNT X
UNFAIR COMPETITION, FALSE DESIGNATION OF ORIGIN,
FALSE DESCRIPTION and FALSE ADVERTISING (LANHAM ACT § 43(a))
(Against Defendant Gossain – Infringing Product)

272. Weight Watchers repeats and realleges each and every allegation contained in the prior paragraphs hereto, and the same are incorporated herein and made a part hereof.

273. In the alternative, in the event it is determined that the Infringing Product infringes neither the '482 Patent, the '885 Patent, nor the '531 Patent, Defendant's use and display of the Infringing Marks on the Defendant Website, the Infringing Product Website, and the Infringing Product App Store Site in connection with promotional descriptions of the Infringing Product constitute commercial advertising or promotions which misrepresent the nature, characteristics, qualities, and/or origin of both the Infringing Product and of Weight Watchers' System and Products, all within the meaning of Lanham Act § 43(a)(1)(B).

274. Defendant's use and display of the Infringing Marks on the Defendant Website, the Infringing Product Website, and the Infringing Product App Store Site in connection with descriptions of the Infringing Product misrepresent the nature, characteristics, qualities, and/or origin of both the Infringing Product and of Weight Watchers' System and Products by, without limitation, creating the false impression that the Infringing Product is compatible with, compliant with, consistent with, or developed and created for, or to work with, Weight Watchers' System and Products.

275. Upon information and belief, Defendant was aware of Weight Watchers and of Weight Watchers' use of its Trademarks prior to the time Defendant selected and commenced using

the Infringing Marks in connection with promotional descriptions of the Infringing Products on the Defendant Website, the Infringing Product Website, and the Infringing Product App Store Site.

276. On information and belief, Defendant adopted and used the Infringing Marks in connection with the promotion of the Infringing Product with the intent and purpose of benefitting from Weight Watchers' reputation and goodwill, and Defendant's conduct constitutes willful unfair competition, false designation of origin, and false description and advertising, all in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a).

277. The acts of Defendant have caused irreparable harm and damage to Weight Watchers and will continue to cause irreparable harm to Weight Watchers, and have caused and will continue to cause Weight Watchers to suffer monetary damage in an amount thus far not determined.

278. Weight Watchers has no adequate remedy at law for the injury alleged in this count, and said injury is, in part, intangible in nature and not capable of being fully measured or valued entirely in terms of monetary damages.

279. Notwithstanding the inadequacy of and the difficulty of presently fully ascertaining Weight Watchers' monetary damages caused by Defendant's wrongful conduct, Weight Watchers is informed and believes and, based upon such information and belief, alleges that said conduct has resulted in irreparable, direct and proximate damages to Weight Watchers. Weight Watchers seeks leave of this Court to amend its complaint to allege the full nature and extent of said monetary damages if, when and to the extent the damages are ascertained.

COUNT XI
UNFAIR COMPETITION, FALSE DESIGNATION OF ORIGIN,
FALSE DESCRIPTION and FALSE ADVERTISING (LANHAM ACT § 43(a))
(Against Defendant Gossain – Old Infringing Product My Score Plus)

280. Weight Watchers repeats and realleges each and every allegation contained in the prior paragraphs hereto, and the same are incorporated herein and made a part hereof.

281. In the alternative, in the event it is determined that the Old Infringing Product “My Score Plus” (“MSP”) infringes neither the ‘482 Patent, the ‘885 Patent, nor the ‘531 Patent, Defendant’s use and display of the Infringing Marks on the Old Infringing Product App Store Site for MSP in connection with promotional descriptions of the mobile app MSP constitutes commercial advertising or promotions which misrepresent the nature, characteristics, qualities, and/or origin of both the Old Infringing Product MSP and of Weight Watchers’ System and Products, all within the meaning of Lanham Act § 43(a)(1)(B).

282. Defendant’s use and display of the Infringing Marks on the Old Infringing Product App Store Site for MSP in connection with descriptions of the Infringing Product MSP misrepresent the nature, characteristics, qualities, and/or origin of both the mobile app MSP and of Weight Watchers’ System and Products by, without limitation, creating the false impression that the Old Infringing Product MSP is compatible with, compliant with, consistent with, or developed and created for, or to work with, Weight Watchers’ System and Products.

283. Upon information and belief, Defendant was aware of Weight Watchers and of Weight Watchers’ use of its Trademarks prior to the time Defendant selected and commenced using the Infringing Marks in connection with promotional descriptions of the Old Infringing Product MSP on the Old Infringing Product App Store Site for MSP.

284. On information and belief, Defendant adopted and used the Infringing Marks in connection with the promotion of the Old Infringing Product MSP with the intent and purpose of benefitting from Weight Watchers’ reputation and goodwill, and Defendant’s conduct constitutes willful unfair competition, false designation of origin, and false description and advertising, all in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a).

285. The acts of Defendant have caused irreparable harm and damage to Weight Watchers and will continue to cause irreparable harm to Weight Watchers, and have caused and will continue to cause Weight Watchers to suffer monetary damage in an amount thus far not determined.

286. Weight Watchers has no adequate remedy at law for the injury alleged in this count, and said injury is, in part, intangible in nature and not capable of being fully measured or valued entirely in terms of monetary damages.

287. Notwithstanding the inadequacy of and the difficulty of presently fully ascertaining Weight Watchers' monetary damages caused by Defendant's wrongful conduct, Weight Watchers is informed and believes and, based upon such information and belief, alleges that said conduct has resulted in irreparable, direct and proximate damages to Weight Watchers. Weight Watchers seeks leave of this Court to amend its complaint to allege the full nature and extent of said monetary damages if, when and to the extent the damages are ascertained.

COUNT XII
UNFAIR COMPETITION, FALSE DESIGNATION OF ORIGIN,
FALSE DESCRIPTION and FALSE ADVERTISING (LANHAM ACT § 43(a))
(Against Defendant Gossain – Old Infringing Product Ultimate Points Calculator Plus)

288. Weight Watchers repeats and realleges each and every allegation contained in the prior paragraphs hereto, and the same are incorporated herein and made a part hereof.

289. In the alternative, in the event it is determined that the Old Infringing Product "Ultimate Points Calculator Plus" ("UPCP") infringes neither the '482 Patent, the '885 Patent, nor the '531 Patent, Defendant's use and display of the Infringing Marks on the Old Infringing Product App Store Site for UPCP in connection with promotional descriptions of the mobile app UPCP constitutes commercial advertising or promotions which misrepresent the nature, characteristics, qualities, and/or origin of both the Old Infringing Product UPCP and of Weight Watchers' System and Products, all within the meaning of Lanham Act § 43(a)(1)(B).

290. Defendant's use and display of the Infringing Marks on the Old Infringing Product App Store Site for UPCP in connection with descriptions of the Infringing Product UPCP misrepresent the nature, characteristics, qualities, and/or origin of both the mobile app UPCP and of Weight Watchers' System and Products by, without limitation, creating the false impression that the Old Infringing Product UPCP is compatible with, compliant with, consistent with, or developed and created for, or to work with, Weight Watchers' System and Products.

291. Upon information and belief, Defendant was aware of Weight Watchers and of Weight Watchers' use of its Trademarks prior to the time Defendant selected and commenced using the Infringing Marks in connection with promotional descriptions of the Old Infringing Product UPCP on the Old Infringing Product App Store Site for UPCP.

292. On information and belief, Defendant adopted and used the Infringing Marks in connection with the promotion of the Old Infringing Product UPCP with the intent and purpose of benefitting from Weight Watchers' reputation and goodwill, and Defendant's conduct constitutes willful unfair competition, false designation of origin, and false description and advertising, all in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a).

293. The acts of Defendant have caused irreparable harm and damage to Weight Watchers and will continue to cause irreparable harm to Weight Watchers, and have caused and will continue to cause Weight Watchers to suffer monetary damage in an amount thus far not determined.

294. Weight Watchers has no adequate remedy at law for the injury alleged in this count, and said injury is, in part, intangible in nature and not capable of being fully measured or valued entirely in terms of monetary damages.

295. Notwithstanding the inadequacy of and the difficulty of presently fully ascertaining Weight Watchers' monetary damages caused by Defendant's wrongful conduct, Weight Watchers is

informed and believes and, based upon such information and belief, alleges that said conduct has resulted in irreparable, direct and proximate damages to Weight Watchers. Weight Watchers seeks leave of this Court to amend its complaint to allege the full nature and extent of said monetary damages if, when and to the extent the damages are ascertained.

COUNT XIII
UNFAIR COMPETITION, FALSE DESIGNATION OF ORIGIN,
FALSE DESCRIPTION and FALSE ADVERTISING (LANHAM ACT § 43(a))
(Against Defendant Gossain – Old Infringing Product Ultimate Points Calculator Classic)

296. Weight Watchers repeats and realleges each and every allegation contained in the prior paragraphs hereto, and the same are incorporated herein and made a part hereof.

297. In the alternative, in the event it is determined that the Old Infringing Product “Ultimate Points Calculator Classic” (“UPCC”) infringes neither the ‘482 Patent, the ‘885 Patent, nor the ‘531 Patent, Defendant’s use and display of the Infringing Marks on the Old Infringing Product App Store Site for UPCC in connection with promotional descriptions of the mobile app UPCC constitutes commercial advertising or promotions which misrepresent the nature, characteristics, qualities, and/or origin of both the Old Infringing Product UPCC and of Weight Watchers’ System and Products, all within the meaning of Lanham Act § 43(a)(1)(B).

298. Defendant’s use and display of the Infringing Marks on the Old Infringing Product App Store Site for UPCC in connection with descriptions of the Infringing Product UPCC misrepresent the nature, characteristics, qualities, and/or origin of both the mobile app UPCC and of Weight Watchers’ System and Products by, without limitation, creating the false impression that the Old Infringing Product UPCC is compatible with, compliant with, consistent with, or developed and created for, or to work with, Weight Watchers’ System and Products.

299. Upon information and belief, Defendant was aware of Weight Watchers and of Weight Watchers’ use of its Trademarks prior to the time Defendant selected and commenced using

the Infringing Marks in connection with promotional descriptions of the Old Infringing Product UPCC on the Old Infringing Product App Store Site for UPCC.

300. On information and belief, Defendant adopted and used the Infringing Marks in connection with the promotion of the Old Infringing Product UPCC with the intent and purpose of benefitting from Weight Watchers' reputation and goodwill, and Defendant's conduct constitutes willful unfair competition, false designation of origin, and false description and advertising, all in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a).

301. The acts of Defendant have caused irreparable harm and damage to Weight Watchers and will continue to cause irreparable harm to Weight Watchers, and have caused and will continue to cause Weight Watchers to suffer monetary damage in an amount thus far not determined.

302. Weight Watchers has no adequate remedy at law for the injury alleged in this count, and said injury is, in part, intangible in nature and not capable of being fully measured or valued entirely in terms of monetary damages.

303. Notwithstanding the inadequacy of and the difficulty of presently fully ascertaining Weight Watchers' monetary damages caused by Defendant's wrongful conduct, Weight Watchers is informed and believes and, based upon such information and belief, alleges that said conduct has resulted in irreparable, direct and proximate damages to Weight Watchers. Weight Watchers seeks leave of this Court to amend its complaint to allege the full nature and extent of said monetary damages if, when and to the extent the damages are ascertained.

COUNT XIV
INJURY TO BUSINESS REPUTATION AND DECEPTIVE ACTS AND PRACTICES
(Against Defendant Gossain)

304. Weight Watchers repeats and realleges each allegation contained in the prior paragraphs.

305. The forgoing acts of Defendant constitute unfair competition and infringement of the Trademarks.

306. The forgoing acts of Defendant have and will create a likelihood of injury to the business reputation of Weight Watchers, in violation of New York Gen. Bus. Law § 360-l, for which Weight Watchers is entitled to injunctive relief.

307. The foregoing acts of Defendant constitute willful, deceptive acts and practices in the conduct of business, trade and/or commerce, in violation of New York Gen. Bus. Law § 349, for which Weight Watchers is entitled to injunctive relief, actual damages, treble damages, punitive damages, attorneys' fees, and costs.

COUNT XV
COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION
(Against Defendant Gossain)

308. Weight Watchers repeats and realleges each allegation contained in the prior paragraphs.

309. The acts of Defendant infringe the Trademarks, and constitute trademark infringement in violation of the common law of the State of New York.

310. Upon information and belief, Defendant intentionally and willfully infringed and misappropriated Weight Watchers' Trademarks, took advantage and made use of Weight Watchers' efforts and good will, and otherwise unfairly competed with Weight Watchers with the intent of causing confusion, mistake and deception as to the source of the Infringing Products and each of the Old Infringing Products. As such, Defendant has committed trademark infringement and unfair competition in violation of the common law of the State of New York.

311. The foregoing acts of Defendant have injured and will continue to injure Weight Watchers by depriving it of sales of its Products and System, by injuring its business reputation,

and/or by passing off Defendant's Infringing Products as Weight Watchers' Products and System, all in violation of the common law of the State of New York.

312. Defendant's acts of common law trademark infringement and unfair competition have caused irreparable harm and damage to Weight Watchers and have caused Weight Watchers monetary damage in an amount thus far not determined, for which Weight Watchers is entitled to its actual damages, Defendant's profits, punitive damages, and attorneys' fees and costs.

313. Weight Watchers has no adequate remedy at law.

WHEREFORE, Weight Watchers demands judgment against Defendants as follows:

A. That Defendants' conduct willfully infringes the '531 Patent, or, in the alternative, the '885 Patent or, further in the alternative, the '482 Patent, willfully infringes the Registered Trademarks and the Trademarks, falsely designates the origin of the Infringing Products and of each of the Old Infringing Products, falsely describes such products and unfairly competes with Weight Watchers, all in violation of 35 U.S.C. § 271 et seq. and Lanham Act §§ 32 and 43(a), 15 U.S.C. §§ 1114 and 1125.

B. In the alternative, in the event that Defendants' conduct does not infringe the '531 Patent, the '885 Patent, or the '482 Patent, that Defendant Gossain's conduct constitutes willful unfair competition, false designation of origin, and false advertising in violation of Lanham Act § 43(a), 15 U.S.C. § 1125, in that Defendant Gossain's promotional descriptions of its goods and services falsely and misleadingly describe the nature, characteristics, and attributes of the Infringing Products.

C. That Defendant Gossain's conduct violates the provisions of New York Gen. Bus. Law §§ 360-1 and 349, and constitutes willful trade dress infringement and unfair competition under the common law of the State of New York.

D. That Defendants and their agents, officers, directors, servants, employees, their successors and assigns, and all others in active concert or participation with Defendants be preliminarily and permanently enjoined from directly or indirectly:

- (i) Making, using, or selling any product, including the Infringing Product, any Old Infringing Product, and/or any later or subsequent versions of the Infringing Product or any Old Infringing Product, that infringe one or more claims of the '531 Patent, the '885 Patent, or the '482 Patent;
- (ii) Using the Trademarks, or any other words, designations, trademarks, or trade names which are similar to or are colorable imitations of the Trademarks, alone or as a part of, or together with any other word or words, trademark, service mark, trade name, trade dress or other business or commercial designation or any logo, symbol or design in connection with the sale, offering for sale, advertising, distributing or promotion of weight loss, weight management, health, nutrition, and/or related products or services.
- (iii) In the event no infringement of the '531 Patent, the '885 Patent, or the '482 Patent is found, representing by words and/or conduct that the Infringing Product, any Old Infringing Product, or any products related thereto which are offered for sale, sold, promoted or advertised by Defendant Gossain, are compatible with, consistent with, or designed to or capable of working with Weight Watchers' products and proprietary systems;
- (iv) Representing by words or conduct that the Infringing Product, any Old Infringing Product, or any products related thereto, which are offered for

sale, sold, promoted or advertised by Defendant Gossain, are authorized, sponsored, endorsed by, or otherwise connected with Weight Watchers;

- (v) Committing any act which, in and of itself, or from the manner or under the circumstances in which it is done, amounts to patent infringement, trademark infringement, false designation of origin, false description, false advertising or false representation of the Infringing Product or any Old Infringing Product, whereby wholesalers, retailers and/or consumers of such products are deceived into believing that the Infringing Products, any Old Infringing Product, or related products, emanate from Weight Watchers or from a company that is sponsored, authorized, or endorsed by Weight Watchers;
- (vi) Taking any action which is likely to put others in a position to sell or palm-off the goods of Defendant Gossain as the goods of Weight Watchers or to unfairly compete with Weight Watchers; and
- (vii) Otherwise unfairly competing with Weight Watchers or committing infringement of Weight Watchers rights.

E. That the Court issue an Order directing Defendants:

- (i) To immediately deliver to Weight Watchers, under oath and for destruction, all labels, advertisements, promotional materials, business forms, catalogs, price sheets and/or all of the things in the possession, custody, or control of Defendants, which are or can be used to create and/or display any software, program, application, artwork, name, mark or designation which infringes either Patent or is similar to and/or a colorable imitation of any Trademark, alone or together with any other artwork, suffix, prefix, word or words,

trademark, service mark, trade name, trade dress or other business or commercial designation or any logo, symbol or design, or any code, software, or technology, in connection with the manufacture, distribution, sale, offer for sale, advertisement or promotion of weight loss, weight management, health, nutrition, and/or related products or services;

- (ii) To file with the Court and serve on Weight Watchers, within thirty (30) days after the service on Defendants of such injunctions, a report in writing and under oath, setting forth in detail the manner and form in which Defendants has complied with the injunction.

F. That the Court award judgment in favor of Weight Watchers for the damages sustained by Weight Watchers and the profits made by Defendant Gossain as a result of Defendants' wrongful conduct.

G. That the Court award judgment in favor of Weight Watchers in the amount of treble damages.

H. That the Court award punitive damages to Weight Watchers in an amount to be determined.

I. That the Court award judgment against Defendants for the full costs of this action, including reasonable attorneys' fees.

J. That the Court require a full and complete accounting of all monies received by Defendants as a result of the manufacture, sale, advertising, and distribution of the Infringing Products, together with an order transferring to Weight Watchers any amount found to be due to it.

K. That the Court declare this an exceptional case.

L. For interest on all amounts found to be due to Weight Watchers from Defendants, at the prevailing rate, from the date said amounts or any part thereof became or becomes due.

M. That the Court require Defendants to notify their commercial associates, suppliers and customers, including manufacturers, wholesalers and retailers of said Order.

N. That the Court order such other, further, and different relief as the nature of this action may require and that the Court may deem just and proper.

O. That the Court retain jurisdiction of this action for the purpose of enabling Weight Watchers to apply to the Court, at any time, for such further orders and directions as may be necessary or appropriate for the interpretation 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.

TRIAL BY JURY DEMANDED

Plaintiff demands a jury trial of all issues so triable.

Dated: Scarsdale, New York
August 23, 2016

Respectfully submitted,

LACKENBACH SIEGEL LLP

By: /s/ Robert B. Golden

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