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*Attorneys for Plaintiff I'm Not Done Yet Foundation*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

I'M NOT DONE YET FOUNDATION,

Plaintiff,

- against -

CONOPCO, INC. D/B/A UNILEVER,

Defendant.

Civil Action No.

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff I'm Not Done Yet Foundation ("Plaintiff" or the "Foundation"), by its attorneys Pryor Cashman LLP, alleges as follows against Defendant Conopco, Inc. d/b/a Unilever ("Defendant" or "Unilever"):

**NATURE OF ACTION**

1. This is an action for willful trademark infringement and unfair competition, among other statutory and common law violations. The I'm Not Done Yet Foundation is aptly named for its mission to support adolescent and young adult cancer patients and survivors through a range of programs and services all designed to empower and enable them to "never be done" surviving. The I'm Not Done Yet Foundation has used the trademarks I'M NOT DONE YET and NOT DONE YET for nearly five years, and has obtained federal trademark registrations for the marks.

2. Global consumer product giant Unilever has launched an advertising campaign for its Degree deodorant line and other personal care items using the NOT DONE YET and the I'M NOT DONE YET trademarks.

3. Despite correspondence from the Foundation to Unilever demanding that it cease and desist its infringing activities, and promises that Unilever wanted to resolve the matter, Defendant continues to use the infringing NOT DONE YET and I'M NOT DONE YET trademarks and has ghosted the Foundation.

4. Defendant's actions have caused and are causing immediate and irreparable harm to the Foundation.

### **PARTIES**

5. Plaintiff I'm Not Done Yet Foundation is a New York non-profit organization, with an address at 27 Hilton Avenue, Garden City, New York 11530. The Foundation is the owner of the I'M NOT DONE YET® and NOT DONE YET® trademarks.

6. Upon information and belief, defendant Conopco, Inc. d/b/a Unilever is a New York corporation, with an address at 700 Sylvan Avenue, Englewood Cliffs, New Jersey 07632.

### **JURISDICTION AND VENUE**

7. This case is a civil action arising under the Lanham Act, 15 U.S.C. § 1051, *et seq.* This Court has subject matter jurisdiction over the claims in this Complaint that relate to trademark infringement and unfair competition pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331 and 1338(a) & (b).

8. This Court has supplemental jurisdiction over the claims in this Complaint that arise under state common law of the State of New York pursuant to 28 U.S.C. § 1367(a), because the

state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

9. This Court has personal jurisdiction over Defendant Unilever because, upon information and belief, Defendant is a New York corporation.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because the Defendant is transacting business and committing tortious acts within the State of New York and this District.

### **FACTS**

#### **I. Plaintiff and the I'M NOT DONE YET and NOT DONE YET Services**

11. The Foundation was formed by Peter Menges to honor the memory of his son, Bobby Menges, who died at the age of nineteen from cancer. The Foundation supports adolescent and young adult cancer patients and survivors through a range of programs and services all designed to empower and enable them to “never be done” surviving (*see* <https://www.imnotdoneyetfoundation.org/>).

12. Adolescent and young adult cancer patients and survivors face many challenges because of their diagnosis and treatment: financial toxicity, body image concerns, compromised fertility, isolation, and loneliness. The I’m Not Done Yet Foundation supports cancer patients and survivors across the country to face these challenges through its four core initiatives, including (i) fertility preservation, (ii) peer connection and psychosocial support, (iii) fitness and wellness, and (iv) local and national blood drives.

13. The Foundation partners with organizations, non-profits and universities to support its NOT DONE YET mission, including the Duke Cancer Institute, Case Western Reserve University, American Red Cross, New York Blood Center, NYU Langone – Mineloa Cancer Center for Kids, and more.

14. The Foundation raises awareness and builds momentum for its mission using the marks I’M NOT DONE YET and NOT DONE YET in a variety of ways. For example, in May 2022, the Foundation opened the Bobby Menges AYA Treatment Lounge at the Cancer Center for Kids at NYU Langone-Mineola, an age-appropriate space for young adolescents to complete homework or visit with friends while visiting or admitted for treatments. On October 7, 2022, the Foundation rang the opening bell at the NASDAQ stock exchange to kick off its DON’T EVER BE DONE weekend from October 7-10, 2022, which gave a global audience exposure to the Foundation and its mission. See <https://www.nasdaq.com/videos/im-not-done-yet-foundation-rings-the-nasdaq-stock-market-opening-bell>.

15. The I’m Not Done Yet Foundation owns federal trademark registrations for the marks I’M NOT DONE YET and NOT DONE YET for use on and in connection with a variety of Class 36 charitable fundraising and marketing services (the “NOT DONE YET Marks”):

Mark	Reg. No.	Services
I’M NOT DONE YET	6,028,818	Charitable fund raising services, in Class 36.
NOT DONE YET	6,732,902	Charitable fundraising service; charitable services, namely, fundraising services by means of organizing special events for health care research and other programs; charitable foundation services, namely, providing financial assistance for programs and services of others; charitable services, namely, providing financial assistance to disadvantaged persons for health care and educational opportunities; charitable services, namely, providing financial support to disadvantaged individuals for the purpose of facilitating health care treatment, in Class 36

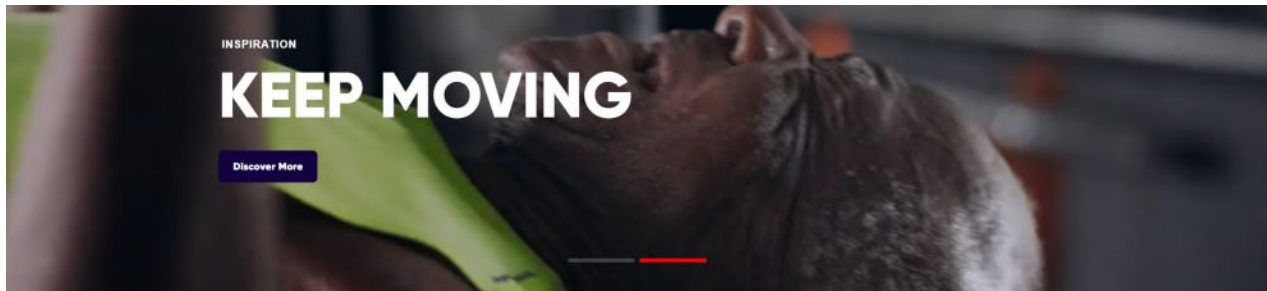
16. The Foundation has been using the mark I’M NOT DONE YET in connection with these services since at least as early as May 2018 and has been using the mark NOT DONE YET in connection with these services since at least as early as January 2019.

17. In 2021, the Foundation launched a line of apparel and other accessories through a website using the NOT DONE YET Marks in furtherance of its mission.

**II. Unilever's Adoption of the Infringing NOT DONE YET Marks**

18. On or about April 27, 2021, Unilever filed an intent-to-use application for the mark NOT DONE YET with the United States Patent and Trademark Office, Serial No. 90/674,978. Unilever applied to register the mark in Class 3 for body wash; shampoo and conditioner; hair styling preparations; deodorants and antiperspirants.

19. Unilever uses the infringing marks NOT DONE YET and I'M NOT DONE YET in advertising campaign slogans to empower its consumers to never give up and to keep moving, as evidenced by, among other things, a banner located on its website as well as a mission page explaining its use of NOT DONE YET and I'M NOT DONE YET:



**NOT DONE YET NOT DONE YET NOT DONE YET**  
NOT DONE YET NOT DONE YET NOT DONE YET

We're on a mission to get the world moving - one step, skip, jump or jive at a time. It doesn't matter where you start. Just that you do. We want to give everyone the confidence to move and keep moving.

# NOT DONE YET

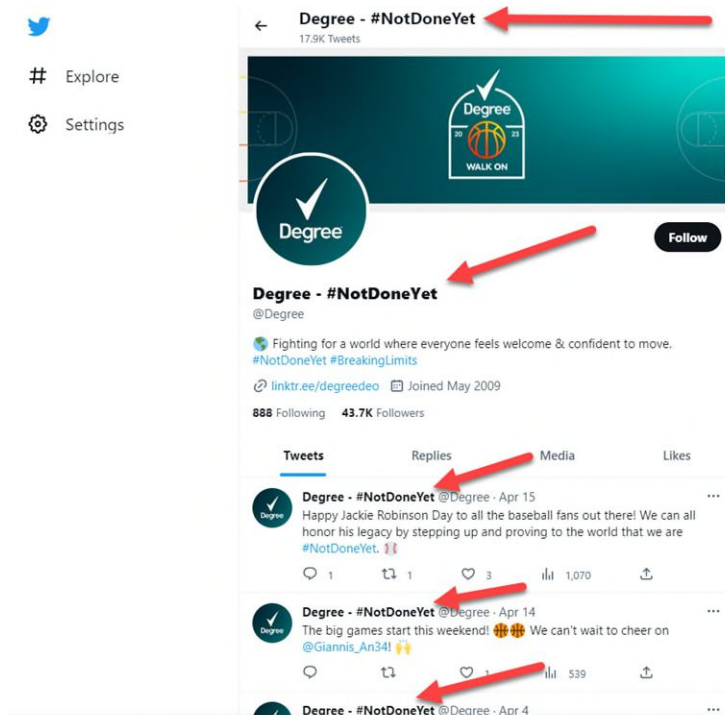


We all have limits: we move, we tire, we wobble. We doubt ourselves. We hear that voice in our head that says "I'm not built for this." Degree knows that in these exact moments, worrying about sweat and odor can make or break your confidence. With up to 72 hours of nonstop, unmissable protection, Degree is ready to work as hard as you are. Push your limits, keep. Moving. Change that voice in your head into one that says "I'M NOT DONE YET."

**Degree Advanced**

**#NotDoneYet**

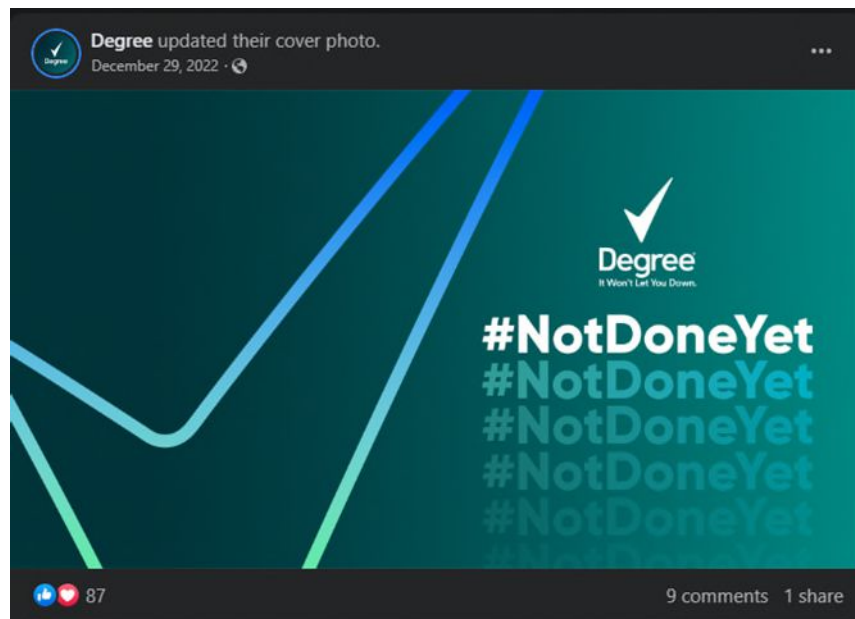
20. Unilever uses the Foundation's NOT DONE YET Marks, without authorization, including by using the hashtag #NotDoneYet in posts on social media such as Instagram, Twitter, Facebook and TikTok. Unilever has even gone so far as to use #NotDoneYet as part of Degree's Twitter handle, which is displayed every time Degree tweets:



(see <https://twitter.com/Degree>).


21. Unilever intends to create the same commercial impression as Plaintiff. Indeed, a Degree commercial, showing persons of all ages, genders and abilities struggling to continue their tasks, ends with the narrator stating “There’s another voice. It whispers. Then it roars. I’m not done yet. Are you?” This commercial conveys the same, strong, empowering message of the I’m Not Done Yet Foundation’s mission. (See [https://www.youtube.com/watch?v=70HovPC3PLU&ab\\_channel=Degree](https://www.youtube.com/watch?v=70HovPC3PLU&ab_channel=Degree)).

22. Unilever uses the infringing NOT DONE YET mark in connection with its social impact programs, thereby heightening the risk that consumers will mistakenly believe that the Foundation has partnered with Degree.



**Degree** ✓  
January 11 · 🌐

Fear of judgement should never stop you from climbing high. Movement is for everyone, even though it's not the same for everyone. On good days and tough days, every small move means a win. So here's to you: the fearless, the unstoppable, the more than able. Take it to the top.  
[#WatchMeMove](#) [#NotDoneYet](#)



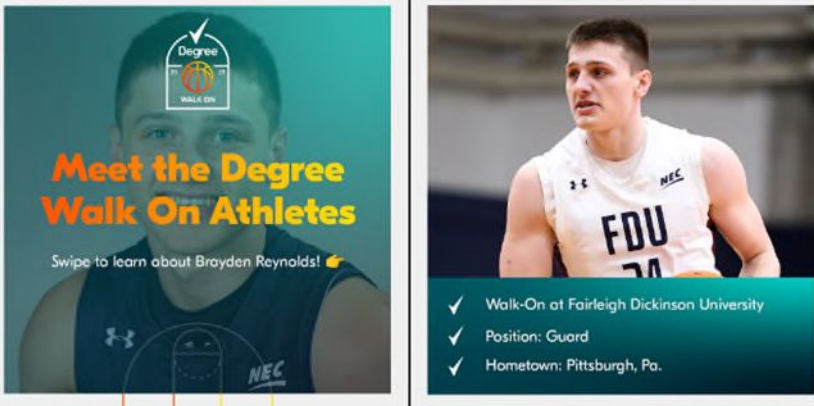
85 17 comments 6 shares

**Degree** ✓  
April 3 · 🌐

We spent all of March recognizing walk-on athletes who embodied the [#NotDoneYet](#) spirit of the game they love with a \$25,000 NIL deal and professional mentorship to help them navigate through the rest of their college years. 🏀

We worked with [@giannis\\_an34](#) and asked basketball fans everywhere to nominate a fifth walk-on athlete who has given the game their all and broken all limits to be where they are today.

We are psyched to introduce Brayden Reynolds, who will be the fifth... [See more](#)

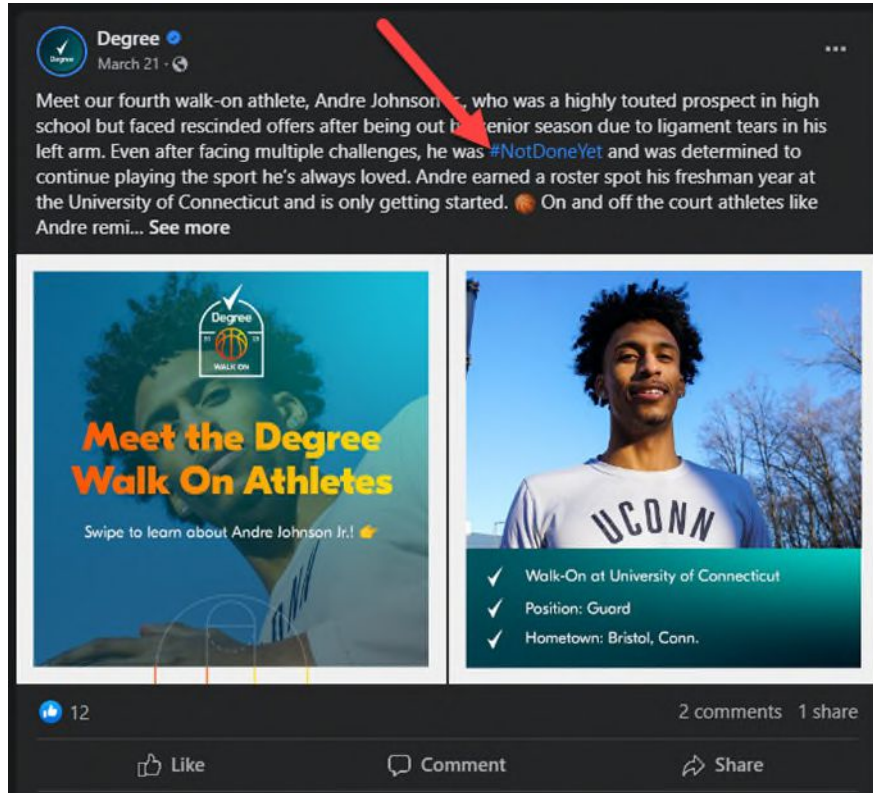


- ✓ Walk-On at Fairleigh Dickinson University
- ✓ Position: Guard
- ✓ Hometown: Pittsburgh, Pa.

21 9 shares

Like Comment Share





23. Unilever is a corporate behemoth. The Foundation cannot compare in terms of market reach or penetration. Because of Unilever’s market saturation of its use of the infringing NOT DONE YET and I’M NOT DONE YET marks, consumers may mistakenly believe that the Foundation is related to Degree deodorant, creating a serious risk of reverse confusion. Reverse confusion is even more likely here because Unilever is known for its charitable giving and its social impact programming. Unilever’s infringing use has made the Foundation lose control over its NOT DONE YET Marks.

24. Unilever has flagrantly disregarded the Foundation’s federally recognized trademark rights and common law rights by callously usurping the NOT DONE YET Marks and saturating global media, social media, streaming, print advertising, television, and more with its use of the infringing NOT DONE YET and I’M NOT DONE YET marks.

25. Unilever's open and egregious infringement is clearly displayed on its website at <https://www.degreedeodorant.com/us/>, which uses the infringing NOT DONE YET and I'M NOT DONE YET marks, as well as on its social media pages and other websites displaying the infringing NOT DONE YET mark.

26. Unilever's continued infringement damages the Foundation's ability to market and promote awareness for its cause, potentially deviating much-needed donation money away from the Foundation. The Foundation's NOT DONE YET Marks serve as single source identifiers of the Foundation and its mission to support adolescent and young adult cancer patients and survivors.

### **III. The I'm Not Done Yet Foundation is Suffering Irreparable Harm**

27. Unilever has undertaken activities in connection with an advertising campaign that is likely to cause consumer confusion as to the source or origin of the Foundation's services. In particular, consumers are likely to mistakenly believe that Unilever is the source of the Foundation's charitable services or that there is a relationship between the two parties when there is not.

28. The likelihood of confusion, mistake and deception created by Unilever's campaign is causing irreparable harm to the Foundation and the goodwill associated with the NOT DONE YET Marks.

29. Upon information and belief, Unilever undertook the actions described herein with the deliberate intent to create confusion as to the source, sponsorship and quality of Unilever's products. Despite knowledge of the Foundation, and Unilever's empty promises of resolution, Unilever has cavalierly forged ahead with its continued infringement.

30. This is a textbook reverse confusion case: as Unilever (the much larger, junior user) overruns the Foundation (the smaller, senior user) by virtue of its size, market power, advertising

reach, and almost limitless resources, consumers are likely to mistakenly believe that the Foundation's services emanate from Unilever or that the I'm Not Done Yet Foundation is somehow affiliated or associated with Unilever.

31. Despite its awareness of the Foundation's federally registered marks and charitable services founded on personal loss, Unilever continues to willfully infringe the NOT DONE YET Marks and inflict significant and irreparable harm on the Foundation.

32. Unilever's use of the infringing NOT DONE YET and I'M NOT DONE YET marks is likely to cause consumer confusion with the Foundation's use of its NOT DONE YET Marks.

33. Even more egregiously, despite its actual knowledge of the Foundation's services and the Foundation's continuous use of the NOT DONE YET Marks, Unilever has never attempted to minimize confusion, cease any of its infringing conduct or even officially partner with the Foundation so the parties could together spread positive charitable messages to the world.

34. While Unilever is a multi-million-dollar international conglomerate, it cannot callously and arrogantly disregard the firmly established and protectable trademark rights of a smaller business.

35. Unilever's conduct described herein is intentional, malicious, willful and wanton.

36. Unilever's conduct has injured the Foundation, and if not enjoined, will continue to injure the Foundation.

37. Unilever's unlawful actions described herein commenced nearly five years after the I'm Not Done Yet Foundation began using the NOT DONE YET Marks in the United States.

38. The Foundation will suffer irreparable harm to its charitable efforts and the goodwill associated with the NOT DONE YET Marks.

39. Unilever's deceptive conduct is harming the public in addition to harming the I'm Not Done Yet Foundation.

**FIRST CLAIM**  
**FEDERAL TRADEMARK INFRINGEMENT**  
**15 U.S.C. § 1114**

40. Plaintiff hereby repeats and realleges the foregoing Paragraphs of the Complaint as if fully set forth herein.

41. Plaintiff owns all right, title and interest in and to the NOT DONE YET Marks, which are valid and protectable marks.

42. The Foundation owns two federally registered trademarks covering the NOT DONE YET Marks, namely U.S. Reg. No. 6,028,818 and U.S. Reg. No. 6,732,902.

43. Unilever has used in commerce, without Plaintiff's permission, the NOT DONE YET and I'M NOT DONE YET trademarks in a manner that is likely to cause confusion or mistake or deceive purchasers as to the source of Defendant's goods and/or cause consumers to mistakenly believe that there is an affiliation, connection, approval, sponsorship or association of Plaintiff and/or Plaintiff's services, on the one hand, with Defendant and/or its respective goods, services or commercial activities, on the other hand.

44. Unilever has used in commerce, without Plaintiff's permission, the NOT DONE YET and I'M NOT DONE YET trademark in a manner that is likely to cause consumers to mistakenly believe that Plaintiff's services emanate from Defendant or there is an affiliation, connection, approval, sponsorship or association of Plaintiff and/or Plaintiff's services by Defendant.

45. Defendant's acts constitute infringement of Plaintiff's NOT DONE YET Marks under 15 U.S.C. § 1114.

46. As a direct and proximate result of Defendant's wrongful acts, Plaintiff has suffered and continues to suffer damage to its trademark rights, business reputation and goodwill.

47. Unless restrained, Defendant will continue to use marks confusingly similar to the NOT DONE YET Marks and will cause irreparable damage to Plaintiff.

48. Plaintiff has no adequate remedy at law and is entitled to an injunction restraining Defendant, its respective officers, agents, and employees, and all persons acting in concert with Defendant, from engaging in further acts of infringement.

49. Plaintiff is further entitled to recover from Defendant the actual damages that it has sustained and/or is likely to sustain as a result of Defendant's wrongful acts.

50. Plaintiff is further entitled to recover from Defendant the gains, profits and advantages that Defendant has obtained as a result of their wrongful acts.

51. Because of the willful nature of Defendant's wrongful acts, Plaintiff is entitled to an award of exemplary damages under the common law, and treble damages, increased profits and its reasonable attorneys' fees under 15 U.S.C. § 1117.

**SECOND CLAIM**  
**FEDERAL UNFAIR COMPETITION**  
**15 U.S.C. § 1125(a)**

52. Plaintiff hereby repeats and realleges the foregoing Paragraphs of the Complaint as if fully set forth herein.

53. Plaintiff owns all right, title and interest in and to the NOT DONE YET Marks.

54. Defendant's unauthorized adoption and use of trademarks that are identical to Plaintiff's NOT DONE YET Marks, in connection with an advertising campaign that is likely to cause consumer confusion as to the source or origin of the Foundation's services, as hereinabove alleged, constitutes a use in interstate commerce and a false designation of origin or false and

misleading description or representation of goods and services in commerce, with knowledge of the falsity, which is likely to cause confusion, mistake, and deception, and in commercial advertising and promotion, misrepresents the nature, characteristics, qualities, and origin of Defendant's commercial activities, within the meaning and in violation of 15 U.S.C. § 1125(a).

55. Defendant's use of the NOT DONE YET Marks has caused and is likely to cause confusion and, unless enjoined, is likely to lead consumers to the mistaken belief that Defendant's goods and services originate from or are in some way associated with, affiliated with, connected to, related to, or sponsored or approved by Plaintiff, or in the alternative, is likely to lead consumers to mistakenly believe that Plaintiff's services originate from or are in some way associated with, affiliated with, connected to, related to, or sponsored or approved by Defendant.

56. The aforesaid and continuing acts of Defendant infringe Plaintiff's NOT DONE YET Marks and constitute unfair competition in violation of 15 U.S.C. § 1125(a).

57. Plaintiff has been damaged by said infringement and unfair competition and has no adequate remedy at law for Defendant's continuing infringement.

58. Plaintiff is entitled to an injunction restraining Defendant, its respective officers, agents, and employees, and all persons acting in concert with Defendant, from engaging in further acts of infringement and unfair competition.

59. Unless enjoined, Defendant's continuing infringement will cause irreparable harm to Plaintiff.

60. Plaintiff is further entitled to recover from Defendant the actual damages that it sustained and/or is likely to sustain as a result of Defendant's wrongful acts.

61. Plaintiff is further entitled to recover from Defendant the gains, profits, and advantages that Defendant has obtained as a result of its willful wrongful acts.

62. Because of the willful and malicious nature of Defendant's wrongful acts, Plaintiff is entitled to an award of exemplary damages under the common law, and treble damages, increased profits, and its reasonable attorneys' fees under 15 U.S.C. § 1117.

**THIRD CLAIM**  
**NEW YORK COMMON LAW UNFAIR COMPETITION AND**  
**NEW YORK GENERAL BUSINESS LAW § 360**

63. Plaintiff hereby repeats and realleges the foregoing Paragraphs of the Complaint as if fully set forth herein.

64. Plaintiff owns all right, title, and interest in and to the NOT DONE YET Marks.

65. Consumers identify the NOT DONE YET Marks exclusively with Plaintiff when used on and in connection with charitable services.

66. Plaintiff has invested substantial time, labor, skills, resources, and effort to generate enormous goodwill in the NOT DONE YET Marks, and to obtain a strong reputation in the non-profit and charitable space.

67. Defendant has infringed the NOT DONE YET Marks by using identical marks in an advertising campaign to empower individuals.

68. Defendant's use of the infringing marks NOT DONE YET and I'M NOT DONE YET is calculated to and is likely to create confusion, and deceive and mislead consumers into believing that Defendant's goods, services, and commercial activities originate with or are authorized by Plaintiff or that Plaintiff is responsible for Defendant's goods, services and commercial activities, or in the alternative that Plaintiff's charitable services originate with or are authorized by Defendant or that Defendant is responsible for Plaintiff's charitable services, all to the detriment of Plaintiff.

69. Defendant's use of the infringing marks NOT DONE YET and I'M NOT DONE YET is also calculated to and is likely to cause confusion as to the source of Defendant's and/or Plaintiff's services.

70. Defendant's unlawful acts are intended to misappropriate Plaintiff's goodwill and the NOT DONE YET Marks for Defendant's own pecuniary, reputational, and other corporate gain.

71. Upon information and belief, Defendant's unlawful acts have also been committed in bad faith — being willful and malicious infringement that is intended to confuse the public and injure Plaintiff for Defendant's gain — despite Defendant having prior knowledge of the I'm Not Done Yet Foundation and the NOT DONE YET Marks.

72. Defendant's acts as alleged herein constitute unfair competition under the common law of the State of New York (which remains enforceable pursuant to New York General Business Law § 360-o), and will, unless enjoined by this Court, continue to result in harm to Plaintiff's organization, the NOT DONE YET Marks, and goodwill associated with Plaintiff.

73. Defendant's acts have caused, and are causing, significant and irreparable harm and damage to Plaintiff.

74. Plaintiff has no adequate remedy at law and, unless Defendant is permanently restrained and enjoined by this Court, such irreparable harm will continue.

75. As a direct and proximate result of Defendant's actions as stated herein, Plaintiff has suffered damage to its reputation, the NOT DONE YET Marks, and the goodwill associated with the NOT DONE YET Marks.

76. Plaintiff is entitled to exemplary damages as a result of Defendant's gross, willful and malicious wrongful acts alleged herein.



**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests judgment against Defendant as follows:

1. A permanent injunction enjoining Defendant, and its subsidiaries, partners, members, officers, agents, servants, employees, attorneys, and those in active concert or participation with them or any of them who receive actual notice of the order and judgment of this Court, from:

- a. any further use of any trademark, which includes in whole or in part the term “NOT DONE YET” or “I’M NOT DONE YET” in connection with goods, services and commercial activities associated with charitable services and social impact campaigns;
- b. using any other mark, word, name or symbol similar to Plaintiff’s NOT DONE YET Marks which is likely to cause confusion or cause a mistake or deceive in connection with goods, services and commercial activities associated with charitable services and social impact campaigns;
- c. infringing Plaintiff’s rights in its aforesaid NOT DONE YET Marks, or using any colorable imitation thereof in connection with goods, services, and commercial activities associated with charitable services and social impact campaigns; and
- d. continuing the acts of unfair competition;

2. Pursuant to 15 U.S.C. § 1116(a), ordering Defendant to file with the Court and serve upon Plaintiff’s counsel, within thirty (30) days after service of the order of injunction, a report in writing under oath setting forth in detail the manner and form in which Defendant has complied with the injunction;

3. Awarding Plaintiff all of Defendant's profits, and Plaintiff's damages by reason of the acts of trademark infringement and unfair competition complained of, with said damages to be trebled pursuant to 15 U.S.C. § 1117;

4. Awarding Plaintiff exemplary damages for Defendant's willful and reckless conduct and continuing unfair competition and infringement of Plaintiff's rights continuing after actual or constructive notice of the same;

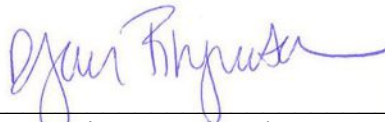
5. Awarding Plaintiff its costs, expenses, and reasonable attorneys' fees to the extent allowed by law; and

6. Awarding Plaintiff such other or further relief as the Court may deem just and proper.

Dated: New York, New York  
July 24, 2023

Respectfully submitted,

PRYOR CASHMAN LLP



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*Attorneys for Plaintiff I'm Not Done Yet Foundation*