

THE HONORABLE \_\_\_\_\_

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

XYZ MEDIA, INC.,

Plaintiff,

v.

UNITED STATES GOLF ASSOCIATION  
and WASHINGTON STATE GOLF  
ASSOCIATION,

Defendants.

No.

**COMPLAINT**

**JURY DEMAND**

Plaintiff, XYZ Media, Inc. (“XYZ”), brings this action against Defendants, the United States Golf Association (“USGA”) and the Washington State Golf Association (the “WSGA”) (collectively, “Defendants”), and alleges as follows:

**PARTIES**

1. XYZ is a corporation organized and existing under the laws of the State of Washington having its principal place of business at 4926 Coronado Lane, Bellingham, Washington 98229.

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1           2.       On information and belief, the USGA is a corporation organized and existing  
2  
3 under the laws of the State of Delaware having its principal place of business at 77 Liberty  
4  
5 Corner Road, Far Hills, New Jersey 07931.  
6

7  
8           3.       On information and belief, the WSGA is a corporation organized and existing  
9  
10 under the laws of the state of Washington having its principal place of business at 1010 S. 336<sup>th</sup>  
11  
12 Street, Suite 310, Federal Way, Washington 98003.  
13

14                               **NATURE OF ACTION**  
15

16  
17           4.       This is an action to enjoin Defendants from acts of unfair competition and for  
18  
19 damages arising out of the same, for declaratory judgment of trademark non-infringement,  
20  
21 copyright non-infringement, and non-misappropriation of the USGA's purported intellectual  
22  
23 property, as well as the cancellation of the trademark and service mark registrations of SLOPE,  
24  
25 SLOPE RATING, and HANDICAP INDEX, owned by the USGA.  
26  
27

28  
29           5.       Further, XYZ seeks a declaration that XYZ does not infringe USGA's purported  
30  
31 exclusive intellectual property rights either by virtue of USGA's federal registrations or  
32  
33 purported common law rights.  
34

35                               **JURISDICTION AND VENUE**  
36

37  
38           6.       This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1221(a), 28  
39  
40 U.S.C. §§ 1331 and 1338(a), because XYZ's claims raise a federal question and arise under the  
41  
42 Lanham Act, and the federal Declaratory Judgment Act. This Court has subject matter  
43  
44 jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1367.  
45  
46

47           7.       The Court has personal jurisdiction over Defendants by virtue of their specific and  
48  
49 continuous contacts in this District and within the State of Washington.  
50  
51

1           8.       Specifically, upon information and belief, Defendants have in the past conducted  
2  
3 and presently conduct business in this District by licensing, marketing, promoting, advertising,  
4  
5 offering for sale, and distributing products and services related to the sport of golf.  
6

7           9.       Defendants have purposefully and voluntarily offered their services, as well as  
8  
9 placed their golf-related products and other business services into the stream of commerce with  
10  
11 the expectation that they will be engaged in business by consumers in the State of Washington.  
12  
13

14           10.      Venue is proper in this District pursuant to 28 USC § 1391(b) because a  
15  
16 substantial part of the events giving rise to XYZ's claims occurred in this District, as described  
17  
18 below.  
19

20  
21                               **FACTUAL BACKGROUND**  
22                               **XYZ, Its Goodwill And Intellectual Property**  
23

24           11.      XYZ has been incorporated in the State of Washington since 2007, and is a  
25  
26 marketing/web technology company in the business of developing websites and applications for  
27  
28 smartphones, such as the iPhone and Android Phones, as well as tablets such as the iPad.  
29  
30

31           12.      XYZ owns DiabloGolf.com, a website.  
32  
33

34           13.      XYZ created the DiabloGolf.com application for smartphones ("Application")  
35  
36 originally in November 2009 and launched it originally in February 2010.  
37  
38

39           14.      DiabloGolf.com is a social networking website for organizing golf games, to  
40  
41 provide golfers tools to find golf games and courses in their area, golf course reviews, tee time  
42  
43 services known as Tee-Vite, as well as allowing golfers to post scores.  
44

45           15.      XYZ owns proprietary business information and intellectual property, which  
46  
47 includes a pending patent application for the Application, copyrights related to the website and  
48  
49  
50  
51

1 the Application, and the trademark Tee-Vite, U.S. Registration No. 3,634,517, with an  
2  
3 application filing date of October 16, 2008.  
4

5 16. DiabloGolf.com has developed its reputation and goodwill in the golf community  
6  
7 through XYZ's substantial marketing and promotion of the website and Application and delivery  
8  
9 of the related services to golfers, accumulating approximately 18,000 users, as well as creating  
10  
11 partnerships throughout the industry.  
12  
13

14 17. XYZ invested a significant amount of money and resources in creating,  
15  
16 developing, promoting, and marketing the DiabloGolf.com website and Application.  
17  
18

19 18. XYZ licenses golf course data from the National Golf Foundation, which includes  
20  
21 the slope rating and course rating for each golf course, for use on the website and Application.  
22  
23

24 19. The Application allows a golfer to enter and view the 20 most recent scores, post  
25  
26 9 or 18 hole scores, auto-fill and manually fill tee box used, course played, slope rating, course  
27  
28 rating and calculate course handicaps.  
29  
30

31 20. The Application has a "Locate Me" function that allows GPS to find the courses  
32  
33 nearest the user or select from one of 16,000 courses to make posting scores easier.  
34

35 21. XYZ allows its DiabloGolf.com members to sign up for and obtain a handicap  
36  
37 known as a "Recreational Handicap."  
38  
39

40 22. XYZ has received numerous positive comments from users in the golf community  
41  
42 regarding the Application and website, including registered and non-registered USGA members.  
43  
44

45 23. XYZ distributes the Application for free, and derives revenue from its partners  
46  
47 and advertising.  
48  
49  
50  
51

**The USGA**

24. On information and belief, the USGA provides services and products to golfers, golf courses, and golf associations in the U.S. and Mexico, including prescribing rules for playing golf and running various golf tournaments.

25. On information and belief, the USGA collects fees from approximately 9,000 golf clubs and 700,000 individuals.

26. On information and belief, the USGA provides golf handicaps to its fee paying members.

27. On information and belief, the USGA tests golf equipment for conformity with regulations that the USGA issues and promotes.

**The WSGA**

28. On information and belief, the WSGA conducts golf tournaments, and provides golf-related services to more than 77,000 individuals and over 600 golf clubs throughout the State of Washington and Northern Idaho.

29. The WSGA collects fees for its services from golf clubs, which are affiliated with the WSGA.

30. On information and belief, the WSGA provides course measuring and rating services to member and non-member clubs on a periodic basis following USGA guidelines.

31. On information and belief, the rating is released to the club when completed by the WSGA.

32. On information and belief, the rating released to the club is a course rating and a slope.

34. On information and belief, the WSGA issues course handicaps to golfers.

35. On information and belief, the WSGA issues a handicap index to golfers that are members of the WSGA or a club that is a member of the WSGA.

36. On information and belief, the WSGA is a representative of the USGA and holds itself out to the public as such.

## Golf Terms

37. On information and belief, the term “scratch golfer” is a golfer whose average score for a round of golf is par or better.

38. On information and belief, the term “bogey golfer” is a golfer who shoots roughly one over par on each hole for a round.

39. The following are excerpts from Wikipedia regarding the golf term “handicap”:

A handicap is a numerical measure of a golfer's playing ability based on the tees played for a given course. It is used to calculate a net score from the number of strokes actually played, thus allowing players of different proficiency to play against each other on somewhat equal terms. The higher the handicap of a player, the poorer the player is relative to those with lower handicaps. . . .

Handicap systems are not used in professional golf. . . .

A handicap is calculated with a specific arithmetic formula that approximates how many strokes above or below par a player should be able to play. . . . While there are many variations in detail, handicap systems are generally based on calculating an individual player's playing ability from his recent history of rounds. Therefore, a handicap is not fixed but is regularly adjusted to increases or decreases in a players scoring. . . . In the United States, handicaps are calculated using several variables: the player's scores from his most recent rounds, and the course rating and slope from those rounds. A "handicap differential" is calculated from the scores, using the course slope and rating, and

the player's handicap differentials are used to calculate the player's handicap.

Wikipedia, [http://en.wikipedia.org/wiki/Golf\\_handicap](http://en.wikipedia.org/wiki/Golf_handicap) (last visited June 8, 2012).

40. On information and belief, a course rating of a particular golf course is a number generally between 67 and 77 used to measure the average "good score" by a scratch golfer on that course.

41. On information and belief, course ratings are in the public domain, e.g. golf courses generally publish the course rating on scorecards for the golfer and the public to view on websites and elsewhere.

42. The following are excerpts from Wikipedia regarding the term "handicap (golf)":

The R&A (now a separate organization from the Royal and Ancient Golf Club), based in St Andrews, Scotland, is responsible for the authorization of handicap systems in all golf playing countries except the United States and Mexico (where USGA rules apply).

....

While there are many variations in detail, handicap systems are generally based on calculating an individual player's playing ability from his recent history of rounds. Therefore, a handicap is not fixed but is regularly adjusted to increases or decreases in a player's scoring.

Wikipedia, [http://en.wikipedia.org/wiki/Handicap\\_\(golf\)](http://en.wikipedia.org/wiki/Handicap_(golf)) (last visited June 8, 2012).

43. Mathematical formulas to calculate a handicap for each individual golfer are in the public domain.

44. On information and belief, a "course rating" indicates the evaluation of the playing difficulty of a course.

45. A "course rating" will vary according to the relative difficulty of the course.

46. A "course rating" is functional and merely descriptive.

1           47. A “handicap index” compares a player’s scoring ability to the scoring ability of a  
2  
3 scratch golfer on a course of standard difficulty.  
4

5           48. A “handicap index” is portable from course to course, as well as from one set of  
6  
7 tees to another set of tees on the same course.  
8  
9

10           49. A “handicap index” is computed from a limited number of scores, usually not  
11  
12 more than 20, plus any eligible tournament scores.  
13

14           50. A “handicap index” is a number.  
15

16           51. A “handicap index” will vary according to the golfer’s scores.  
17  
18

19           52. A “handicap index” reflects the player’s potential because it is based upon the  
20  
21 best handicap differentials posted for a given number of rounds, ideally the best 10 of the last 20  
22  
23 rounds.  
24

25           53. A “handicap index” is functional and merely descriptive.  
26  
27

28           54. A “handicap differential” is the difference between a player’s adjusted gross score  
29  
30 and the course rating of the course on which the score was made, multiplied by 113, then divided  
31  
32 by the slope.  
33  
34

35           55. The “handicap differential” is determined using a mathematical formula.  
36

37           56. The “handicap differential” is a number.  
38  
39

40           57. The “handicap differential” will vary according to the golfer’s scores.  
41

42           58. The “handicap differential” is functional and merely descriptive.  
43  
44

45           59. A “course handicap” is determined by a formula.  
46

47           60. The USGA uses the following formula for course handicap:  
48

$$\text{Course Handicap} = \frac{(\text{Handicap Index} \times \text{Slope Rating})}{113}$$

49  
50  
51           61. A “course handicap” is a number.

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1           62.     The “course handicap” of a golfer will vary according to the golfer’s scores.

2  
3           63.     The “course handicap” is functional.

4  
5           64.     The term “course handicap” and the term “handicap” are used interchangeably by  
6  
7 the golf community in the United States.

8  
9  
10          65.     “Course handicap” is a generic term and merely descriptive.

11  
12          66.     A “slope rating” or “slope” is a measurement of the relative difficulty of a course  
13  
14 for players who are not scratch golfers.

15  
16          67.     Each course is rated from each set of tees for both the scratch golfer and the  
17  
18 bogey golfer.

19  
20          68.     The greater the difference between the scores of the scratch and bogey golfers on  
21  
22 a certain course, the higher the “slope” will be and the more strokes players will receive.  
23  
24 Conversely, the less the difference, the lower the “slope” will be and the fewer strokes players  
25  
26 will receive.

27  
28          69.     The “slope” is derived using elementary algebra.

29  
30          70.     The slope of a line measures the steepness of the line.

31  
32          71.     The “slope rating” or “slope” used for calculating a golf handicap is the slope of a  
33  
34 regression line plotting the difference between the actual scores of bogey golfers and scratch  
35  
36 golfers versus the standard scores based on handicap.

37  
38          72.     The slope of the scores line of an average course has been observed to be 1.13.

39  
40          73.     The “slope” or the “slope rating” is functional.

41  
42          74.     On information and belief, the “slope” is a number from 55-155.

78. Course rating and slope of a golf course are readily available to the public and published in the public domain (e.g., they are generally listed on the golf course scorecard, the website of the golf course, in golf publications, including print and online publications, and golf association websites).

82. On information and belief, the USGA possesses a federal trademark registration for “Slope System”, U.S. Registration No. 1,918,416.

1           83.     On information and belief, the USGA possesses a federal trademark registration  
2  
3 for “Handicap Index”, U.S. Registration No. 2,317,584.  
4

5                                   **The USGA Handicap Manual**  
6

7           84.     On information and belief, the USGA Handicap System is the handicap system  
8  
9 administered by the USGA.  
10

11           85.     On information and belief, the USGA Handicap System manual (the “Manual”) is  
12  
13 the Manual that describes the Handicap System.  
14

15           86.     The Manual includes the mathematical formulas used to determine a golfer’s  
16  
17 handicap by the USGA.  
18

19           87.     On information and belief, the Manual is published on the USGA website and  
20  
21 available to the public.  
22

23           88.     On information and belief, various sections of the Manual are published on  
24  
25 various golf-related websites.  
26

27           89.     On information and belief, a USGA-issued handicap index is required to  
28  
29 participate in a USGA-sanctioned event.  
30

31           90.     On information and belief, a member of a golf club that complies with all  
32  
33 guidelines of the Handicap System is eligible to obtain a USGA Handicap after posting the  
34  
35 mandatory 5 rounds and the scores are adjusted and reviewed according to the Manual.  
36

37           91.     A golfer can independently determine course handicap using the formulas  
38  
39 disclosed in the Manual and the slope rating and course rating listed in the public domain.  
40  
41

**GHIN And The VASP Application/Agreement**

92. On information and belief, the USGA owns the Golf Handicap and Information Network (“GHIN”).

93. On information and belief, GHIN is a handicap computation service.

94. On information and belief, GHIN provides services directly to golfers through the GHIN website.

95. On information and belief, GHIN eGolfer is an online software program for golfers with a GHIN number.

96. On information and belief, GHIN comprises software, a database and server that exchanges data with Value Added Service Providers (“VASPs”), golf clubs, golf associations, and individual golfers through various websites and networks.

97. On information and belief, the data exchanged with GHIN includes a golfer’s score(s), handicap index, and course handicap.

98. On information and belief, GHIN is available to a VASP that completes the VASP Application/Agreement.

99. On information and belief, the VASP Application/Agreement allows a VASP to provide services to authorized golf associations or golf clubs and their members related to the USGA Handicap System.

**XYZ Submitted VASP Application And Proprietary  
Information To The WSGA And USGA**

100. On or around October 27, 2009, XYZ submitted a VASP Application/Agreement, and included the written objectives required by the VASP Application/Agreement, otherwise known as the Executive Summary (“Executive Summary”) of DiabloGolf.com.

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101. The Executive Summary states in part:

We will make it easy for people to start becoming serious about golf by signing up for matches and obtaining a GHIN number online at DiabloGolf.com. In addition, we will provide the flexibility to allow people to post scores online via our site. We are developing and will provide a database of the Men's and Women's clubs in the United States that all support GHIN. In addition, this feature will allow golfers to submit and join these clubs online. We will not be backing any other handicap computation services or clubs that provide such a service. In essence, all the traffic that comes through Diablo Golf will be funneled toward USGA and GHIN supporting golf clubs.

XYZ Media, Inc., is the Parent Company of DiabloGolf.com, and received over \$3m in funding in 2008 from Austin Ventures to complete a variety of websites, one of them is DiabloGolf.com. XYZ is a 14 person search engine optimization/marketing company operating for the past 7 years. 2009 estimated sales over \$7m.

See Exhibit A.

102. In or around November 2009, XYZ obtained access to GHIN and further developed DiabloGolf.com to exchange a user's golf score provided directly to DiabloGolf.com with GHIN.

103. GHIN would then provide the same user's score to DiabloGolf.com when requested.

104. XYZ further provided to GHIN specifications, data, plans, and other intellectual property and proprietary business information to connect the Application to GHIN.

105. On or about December 17, 2010, XYZ received a letter entitled the "GHIN VASP Renewal" and new agreement terms dated December 17, 2010, with the new VASP Agreement, which expressly included mobile applications as another format to better service customers. See Exhibit B.

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**Perkins Coie LLP**  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

1           106. On May 23, 2011, XYZ sent an email to the WSGA through its authorized  
2  
3 representatives, Troy Andrew, John Saegener and John Bodenhamer, entitled DiabloGolf  
4  
5 Metrics. See Exhibit C.  
6

7  
8           107. The May 23, 2011 email contained DiabloGolf Metrics concerning golfers in the  
9  
10 State of Washington, the development of the Application, business proprietary information  
11  
12 developed by XYZ concerning the marketing of the Application, XYZ golf consumer marketing  
13  
14 information, and XYZ business methods to increase the membership of the WSGA. Id.  
15

16  
17           108. On May 24, 2011, Troy Andrew, WSGA's current Executive Director & CEO,  
18  
19 sent an email confirming receipt of the DiabloGolf Metrics email, expressed appreciation for  
20  
21 DiabloGolf Metrics, commended the Application, including its Recreational Handicap, and  
22  
23 further requested to work with XYZ to further incentivize golfers to join the WSGA. Id.  
24

25  
26           109. John Bodenhamer, who left the WSGA shortly thereafter to work at the USGA's  
27  
28 home office as a senior managing director, and John Saegner were copied on the May 24, 2011  
29  
30 email. Id.  
31

32  
33           110. In 2011, shortly after Mr. Bodenhamer's arrival at the USGA's home office, the  
34  
35 USGA updated GHIN eGolfer with new features.  
36

37  
38           111. The GHIN eGolfer now allows golfers to search for other golfers to arrange a  
39  
40 round of golf based on availability, ability, and distance for the selected area, and shows all of  
41  
42 the courses the golfer has played recently.  
43

44  
45           112. The GHIN eGolfer also allows for selection, display and editing capabilities, and  
46  
47 displays events from the golfer's association. When a golfer signs up for an event, it becomes  
48  
49 listed under MyEvents.  
50  
51

113. Upon information and belief, the GHIN eGolfer updates were developed based upon XYZ's business proprietary information and intellectual property.

114. Additionally, several state associations, including the WSGA, are now offering their own mobile applications.

### **The USGA's Bad Faith Termination**

115. Without any forewarning or discussion, by letter dated November 18, 2011, USGA unilaterally terminated its VASP Agreement with XYZ. See Exhibit D.

116. In the termination letter, USGA made false claims regarding XYZ's activities as the basis for termination and broadly asserted purported unspecified violations of the USGA's alleged proprietary rights. Id.

### **USGA Makes A False Statement To Apple**

117. By letter dated November 29, 2011, the USGA made false claims about XYZ to Apple, Inc. ("Apple"), stating, specifically, that "XYZ does not have authorization from the USGA to create mobile apps utilizing the USGA's copyrighted works. Accordingly the USGA requests that the Diablo Golf USGA GHIN Handicap app be removed immediately." See Exhibit E.

118. The USGA further falsely represented that XYZ had created the Application without required USGA approval and that XYZ utilized USGA copyrighted works to create DiabloGolf.com. Id.

### **USGA Makes Numerous False And Misleading Statements To XYZ And Threatens An Improper Lawsuit Against XYZ**

119. On December 19, 2011, counsel for XYZ responded to USGA's letter terminating the VASP to correct the misstatements and misunderstandings reflected in USGA's termination

1 letter and to underscore that XYZ intends to enforce its rights to the fullest extent of the law,  
 2  
 3 especially in view of the USGA letter to Apple. See Exhibit F.  
 4

5 120. By letter dated December 21, 2011, the USGA sent a letter by facsimile  
 6  
 7 acknowledging the December 19<sup>th</sup> letter sent from XYZ's counsel, and acknowledging that the  
 8  
 9 USGA entered into a license agreement with XYZ, but saying it could not respond until January  
 10  
 11 2012. See Exhibit G.  
 12  
 13

14 121. On January 5, 2012, the USGA sent a letter by email to XYZ's counsel  
 15  
 16 concerning the VASP agreement, acknowledging the removal from the Application of all USGA  
 17  
 18 marks and information about a partnership with the USGA, but claiming that XYZ's  
 19  
 20 Recreational Handicap somehow violates the USGA's rights. See Exhibit H.  
 21  
 22

23 122. On January 6, 2012, counsel for XYZ sent a letter to the USGA, clarifying XYZ's  
 24  
 25 intellectual property rights. See Exhibit I.  
 26  
 27

28 123. On January 10, 2012, the USGA sent a letter by email to XYZ demanding that  
 29  
 30 XYZ cease and desist from offering the Recreational Handicap and threatening XYZ with legal  
 31  
 32 action for misappropriation of the USGA's claimed intellectual property, stating, in part, the  
 33  
 34 following (emphasis added):  
 35  
 36

37 **The USGA diligently protects its intellectual property.** Most  
 38 recently, the USGA sued to enjoin ISaAC from infringing  
 39 USGA's intellectual property rights in the USGA Handicap  
 40 System in the U.S. District Court in New Jersey in 2009. **The**  
 41 **USGA was ultimately successful in obtaining an injunction by**  
 42 **consent.** We assure you that the USGA has not granted your client  
 43 the right to create a new form of handicapping by utilizing the  
 44 intellectual property of the USGA.  
 45  
 46

47 See Exhibit J (emphasis added).  
 48  
 49  
 50  
 51



1           124. On April 18, 2012, the USGA sent another letter reiterating the USGA's claim  
2  
3 that XYZ had misappropriated USGA intellectual property, demanding that XYZ cease and  
4  
5 desist from such activity and also advising that XYZ's access to the GHIN servers would be cut  
6  
7 off in a week. See Exhibit K.  
8  
9

10           125. XYZ's access to the GHIN servers allowed USGA members who used the  
11  
12 Application to access their handicap information maintained on the GHIN servers.  
13

14           126. By cutting off XYZ's access to GHIN, the USGA cut off its own member's  
15  
16 ability to access their data through the Application.  
17  
18

19           127. On April 20, 2012, counsel for XYZ requested that the USGA delay cutting off  
20  
21 XYZ's access to GHIN to allow XYZ to notify its members of the USGA's decision and allow  
22  
23 for an orderly transition. See Exhibit L.  
24  
25

26           128. The letter also confirmed that XYZ would no longer reference the USGA or its  
27  
28 GHIN system because XYZ would no longer offer USGA members access to that system. Id.  
29  
30

31           129. The letter further stated that XYZ would continue to offer its Recreational  
32  
33 Handicap. Id.  
34

35           130. On April 20, 2012, XYZ began transitioning its website and removing any  
36  
37 reference to the USGA handicap or GHIN, even if a DiabloGolf.com user is also a member of  
38  
39 the USGA and has a GHIN number.  
40  
41

42           131. On May 1, 2012, the USGA's counsel sent a letter to XYZ's counsel, again  
43  
44 demanding that XYZ cease and desist from offering the Recreational Handicap and further  
45  
46 claiming that XYZ was misappropriating USGA property such as the "inputs" to the USGA  
47  
48  
49  
50  
51

1 Handicap system, formulas the USGA uses to compute handicaps, course ratings and slopes, and  
 2  
 3 elements of USGA's equitable stroke control system. See Exhibit M.  
 4

5 132. The letter further claimed that: "XYZ must cease and desist any use of the  
 6  
 7 USGA's marks, or of related terms or language that are likely to cause confusion", which at a  
 8  
 9 "minimum" means that XYZ must "remove any references to" among other things:  
 10  
 11

12 handicap index  
 13 course handicap  
 14 slope  
 15 course rating  
 16  
 17

18 Id.  
 19

20 133. The letter demanded that XYZ confirm it would remove all references to the  
 21  
 22 above terms and others, and that XYZ confirm it would not use any of the elements or inputs of  
 23  
 24 the USGA Handicap System.  
 25  
 26

27 134. XYZ continues to operate its business and continues to offer the Recreational  
 28  
 29 Handicap to DiabloGolf.com users.  
 30  
 31

32 135. Further, XYZ intends to use such terms as course rating, slope, handicap index,  
 33  
 34 and course handicap and other terms claimed as marks by USGA, but which are in fact generic  
 35  
 36 and/or functional and, in any case, as used by XYZ, will not cause confusion that any XYZ  
 37  
 38 product or service is affiliated with or sponsored by the USGA.  
 39  
 40

41 136. As a direct result of the USGA's conduct, as set forth above, XYZ has suffered  
 42  
 43 injury to its reputation and loss of business opportunities, loss of revenue and users of  
 44  
 45 DiabloGolf.com, and loss of goodwill.  
 46  
 47  
 48  
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137. Accordingly, XYZ seeks redress of the damages caused by USGA's unlawful conduct as set forth above, together with declaratory judgment and injunctive relief, as set forth more fully below.

## COUNT I

### Plaintiff v. Defendants

#### **Unfair Competition Pursuant to Section 43(A) of the Lanham Act, 15 U.S.C. § 1125(a)**

138. XYZ repeats and re-alleges the allegations in all preceding paragraphs of this Complaint.

139. The USGA made a false statement to Apple, and possibly others, concerning its intellectual property rights and XYZ's DiabloGolf.com Application.

140. The USGA and/or the WSGA have engaged in acts of unfair competition that include at least the following:

a) Wrongfully terminating XYZ's access on behalf of USGA members to the USGA GHIN servers for the purpose of causing USGA members to abandon XYZ's DiabloGolf.com Application and convert to the USGA and/or WSGA services offered in competition with DiabloGolf.com;

b) Misappropriating the business model, methods, and metrics of XYZ related to its DiabloGolf.com Application;

c) Misrepresenting to XYZ the scope of the USGA's trademark, copyright, and/or other intellectual property rights; and

d) Misrepresenting to Apple that the DiabloGolf.com Application was developed utilizing the USGA's copyrighted works.

1           141. The foregoing acts of the USGA and/or the WSGA have caused XYZ to lose  
 2  
 3 subscribers to its DiabloGolf.com Application, prevented XYZ from registering new  
 4  
 5 DiabloGolf.com users, and have otherwise damaged XYZ.  
 6

7  
 8           142. Further, XYZ is entitled to a constructive trust over any and all monies generated  
 9  
 10 by Defendants through their violation of the Lanham Act.  
 11

12           143. The above-described unfair competition has been willful as it relates to XYZ, thus  
 13  
 14 entitling XYZ to an award of enhanced damages, attorneys' fees and costs.  
 15

16  
 17 **COUNT II**  
 18 **Plaintiff v. Defendants**  
 19 **Unfair Competition Under Washington Common Law**  
 20

21           144. XYZ repeats and re-alleges the allegations in all preceding paragraphs of this  
 22  
 23 Complaint.  
 24

25  
 26           145. The USGA made a false statement to Apple, and possibly others, concerning its  
 27  
 28 intellectual property rights and XYZ's DiabloGolf.com Application, intending to deceive Apple  
 29  
 30 and others.  
 31

32  
 33           146. The USGA and/or the WSGA have engaged in acts of unfair competition intended  
 34  
 35 to deceive the public and cause damage to XYZ that include at least the following:  
 36

37           a) Wrongfully terminating XYZ's access on behalf of USGA members to the  
 38  
 39 USGA GHIN servers for the purpose of causing USGA members to abandon XYZ's  
 40  
 41 DiabloGolf.com Application and convert to the USGA and/or WSGA services offered in  
 42  
 43 competition with the DiabloGolf.com;  
 44

45  
 46           b) Misappropriating the business model, methods and metrics of XYZ related  
 47  
 48 to its DiabloGolf.com Application and passing them off as their own;  
 49  
 50  
 51

1 c) Misrepresenting to XYZ the scope of the USGA's trademark, copyright,  
2  
3 and other intellectual property rights and/or other intellectual property rights; and  
4

5 d) Misrepresenting to Apple that the DiabloGolf.com Application was  
6  
7 developed utilizing the USGA's copyrighted works and/or other alleged intellectual property  
8  
9 rights.  
10

11  
12 147. The foregoing acts of the USGA and/or the WSGA have caused XYZ to lose  
13  
14 subscribers to its DiabloGolf.com application, prevented XYZ from registering new  
15  
16 DiabloGolf.com users, and have otherwise damaged XYZ.  
17

18  
19 148. The above described unfair competition has been willful as it relates to XYZ, thus  
20  
21 entitling XYZ to an award of enhanced damages, attorneys' fees and costs.  
22  
23

24  
25 **COUNT III**  
26 **Plaintiffs v. Defendants**

27  
28 **Violation of The Washington Consumer Protection Act --**  
29 **RCW 19.86.020, et seq.**  
30

31  
32 149. XYZ repeats and re-alleges the allegations in all preceding paragraphs of this  
33  
34 Complaint.  
35

36 150. Defendants' activities as alleged above constitute unfair or deceptive acts or  
37  
38 practices in violation of RCW 19.86.020, et seq.  
39  
40

41 151. Defendants' unfair or deceptive acts and practices are intended to and do impact  
42  
43 the public interest in Washington.  
44

45 152. As a result of Defendants' unfair and deceptive acts and practices, XYZ has  
46  
47 suffered and will continue to suffer losses and irreparable injury to its business reputation and  
48  
49  
50  
51

1 goodwill in amounts not yet ascertained. XYZ's remedy at law is not itself adequate to  
 2  
 3 compensate it for injuries inflicted and threatened by Defendants.  
 4

5 153. Accordingly, pursuant to RCW 19.86.090, XYZ is entitled to injunctive relief,  
 6  
 7 actual and trebled damages, attorneys' fees, and costs of suit.  
 8  
 9

10 **COUNT IV**  
 11 **Plaintiffs v. The USGA**  
 12 **Interference with Prospective Business Advantage**  
 13

14 154. XYZ repeats and re-alleges the allegations in all preceding paragraphs of this  
 15  
 16 Complaint.  
 17

18 155. XYZ has economic relationships with existing DiabloGolf.com users, partners  
 19  
 20 and advertisers.  
 21  
 22

23 156. The USGA was aware of existing relationships between XYZ and  
 24  
 25 DiabloGolf.com users, partners and advertisers, some of whom are USGA members or affiliates  
 26  
 27 of the USGA.  
 28  
 29

30 157. The USGA's intentional conduct and actions as set forth above are a direct and  
 31  
 32 proximate cause of harm to XYZ's business, DiabloGolf.com, and have caused XYZ loss of  
 33  
 34 market share.  
 35  
 36

37 158. The USGA used improper means.  
 38

39 159. The USGA's actions have caused and will continue to cause damage to XYZ,  
 40  
 41 including, but not limited to, lost revenue, lost profits, loss of goodwill, lost business  
 42  
 43 opportunities, lost advertising sales, monetary damage, and damage to reputation.  
 44  
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1 160. XYZ seeks from the USGA compensatory damages, punitive damages, statutory  
 2 damages or enhanced damages, attorneys' fees and costs, and any other relief this Court deems  
 3 appropriate.  
 4  
 5  
 6

7  
 8 **COUNT V**  
 9 **Plaintiffs v. The USGA**  
 10 **Declaratory Judgment Of Non-Infringement**  
 11

12 161. XYZ repeats and re-alleges the allegations in all preceding paragraphs of this  
 13 Complaint.  
 14

15 162. USGA has threatened to enforce its intellectual rights, including alleged  
 16 trademark and copyright rights against XYZ.  
 17  
 18

19 163. XYZ continues to operate the website DiabloGolf.com and the related  
 20 Application.  
 21  
 22

23 164. An actual and justiciable controversy exists between XYZ and USGA with  
 24 respect to USGA's intellectual property rights.  
 25  
 26

27 165. Declaratory relief will resolve this controversy.  
 28

29 166. Accordingly, XYZ respectfully asks this Court to declare that XYZ does not  
 30 infringe any USGA intellectual property right as asserted by the USGA in its letter of May 1,  
 31 2012. See Exhibit M.  
 32  
 33  
 34  
 35  
 36  
 37  
 38

39 **COUNT VI**  
 40 **Plaintiffs v. the USGA**  
 41 **Declaratory Judgment Of No Misappropriation Of USGA's Intellectual Property Rights**  
 42

43 167. XYZ repeats and re-alleges the allegations in all preceding paragraphs of this  
 44 Complaint.  
 45  
 46

47 168. The USGA alleges that XYZ misappropriated USGA's intellectual property rights  
 48 with respect to the USGA Handicap System as more fully set forth above.  
 49  
 50  
 51

COMPLAINT (No. \_\_\_\_\_) – 23

169. XYZ continues to operate the website DiabloGolf.com and the related Application.

170. An actual and justiciable controversy exists between XYZ and USGA with respect to USGA's intellectual property rights.

171. Declaratory relief will resolve this controversy.

172. Accordingly, XYZ respectfully asks this Court to declare that XYZ has not misappropriated any USGA intellectual property in the creation and operation of XYZ's Recreational Handicap.

**COUNT VII**  
**Plaintiffs v. The USGA**  
**Cancellation of Certain Trademark Registrations**

173. XYZ repeats and re-alleges the allegations in all preceding paragraphs of this Complaint.

174. Pursuant to 15 U.S.C. § 1064(3), a mark may be cancelled at anytime if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or is functional.

175. The alleged USGA federal trademarks SLOPE, SLOPE RATING, SLOPE SYSTEM, and HANDICAP INDEX are understood in the golf community to be functional mathematical formulas and numbers related to a particular golf course, a golfer's score and a golfer's handicap.

176. The USGA trademark registration obtained by the USGA is invalid, unenforceable, and should be canceled because the primary significance of the marks to the consuming public is generic.



177. The USGA has also asserted common law trademark rights in the following terms, which are generic and/or functional:

- a) Course handicap; and
- b) Course rating.

### **Jury Demand**

178. Pursuant to Federal Rule of Civil Procedure 38(b), plaintiff demands a trial by jury as to all issues so triable in this action.

### **Prayer for Relief**

**WHEREFORE**, Plaintiff respectfully requests that the Court grant the following relief:

- A. Declare that XYZ does not infringe any USGA trademark rights or copyrights;
- B. Declare that XYZ has not misappropriated any USGA intellectual property;
- C. Declare that USGA marks, SLOPE, SLOPE RATING, SLOPE SYSTEM, and HANDICAP INDEX are generic, and, therefore, such registrations be canceled.
- D. Declare that USGA's alleged common law marks COURSE HANDICAP and COURSE RATING are generic and, therefore, unenforceable.
- E. A judgment finding the USGA and WSGA liable for unfair competition under the Lanham Act and Washington common law and:
  - 1) awarding to XYZ its lost profits and/or actual damages, enhanced and/or trebled due to the USGA's intentional, willful and /or reckless conduct;
  - 2) imposing a constructive trust over all monies Defendants obtained through their violations of XYZ's rights;
  - 3) awarding XYZ its reasonable attorneys' fees and costs; and
  - 4) enjoining the USGA and the WSGA from making any further false and misleading statements.

1 F. A judgment finding the USGA liable for common law interference with  
2  
3 prospective business advantage and:  
4

- 5 1) awarding to XYZ its lost profits and/or actual damages, enhanced and/or  
6 punitive damages due to the USGA's intentional, willful and /or reckless  
7 conduct; and  
8  
9  
10 2) awarding XYZ its reasonable attorneys' fees and costs.  
11

12 G. Pursuant to RCW 19.86.090, a judgment finding that XYZ is entitled to injunctive  
13 relief, actual and trebled damages, attorneys' fees, and costs of suit.  
14  
15  
16

17 DATED: June 8, 2012

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