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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

DW VINEYARDS LLC,

Plaintiff,

vs.

NEW JERSEY TURNPIKE AUTHORITY,

Defendant.

Civil Action No.: 3:16-cv-08251-MAS-TJB

Document Electronically Filed

ANSWER & COUNTERCLAIM

Defendant, New Jersey Turnpike Authority (“NJTA”), by way of answer to Plaintiff DW Vineyards LLC’s d/b/a Old York Cellars (“Plaintiff” or “OYC”) Complaint states as follows:

PARTIES

1. NJTA is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1.
2. NJTA admits that it is a quasi-governmental agency that exists under the laws of the State of New Jersey with its principal place of business located at 1 Turnpike Plaza, Woodbridge, New Jersey 07095.

FACTS

3. NJTA is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3.

4. NJTA is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4.

5. NJTA is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5.

6. NJTA is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6.

7. NJTA admits that it sent a letter to OYC on July 9, 2015. To the extent the remaining allegations contained in paragraph 7 refer to a specific document, the document speaks for itself.

8. NJTA admits that it is the owner of the Garden State Parkway Logo and that the Garden State Parkway Logo has been in use since at least as early as 1956.

9. Admitted.

10. NJTA admits that it is the owner of United States Service Mark Registration No. 2,452,349, which registration has become incontestable and speaks for itself. To the extent Plaintiff is intending to suggest that this registration is the only federal registration owned by NJTA, NJTA denies such allegations.

11. Denied.

12. The allegations in paragraph 12, in part, set forth legal conclusions for which no response is necessary, and to the extent the allegations in paragraph 12 refer to a specific statute, NJTA respectfully refers the Court to the text of the referenced statute for its contents.

NJTA denies Plaintiff's interpretation of the statute and therefore denies the allegations in the second and third sentences of paragraph 12.

13. Denied.

14. The allegations in paragraph 14, in part, set forth legal conclusions for which no response is necessary. To the extent the allegations in paragraph 14 refer to a specific document, NJTA respectfully refers the Court to the text of the referenced regulation or document for its contents.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Admitted.

20. NJTA is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20.

21. Denied.

22. Denied.

23. Denied.

24. NJTA admits that it provided Plaintiff with a copy of a draft complaint in December of 2015, after repeated correspondence with Plaintiff in an attempt to resolve this dispute amicably. Thereafter, Plaintiff strung NJTA along by repeatedly indicating that it would change its original infringing mark in a way that would alleviate NJTA's concerns, even promising that it was developing new branding that would be substantially distinct from that of

NTJA. NJTA elected not to file suit based upon Plaintiff's bad faith representations made solely for the purposes of avoiding a lawsuit.

COUNT ONE

(Declaratory Judgment of Non-Infringement)

25. NJTA repeats the allegations contained in each and every preceding paragraph as if set forth at length herein.

26. NJTA admits that OYC's old and new logo marks infringe on its rights in and to the Garden State Parkway Logo and that it provided Plaintiff with a copy of a draft complaint in December of 2015. NJTA denies the remaining allegations of paragraph 26.

27. The allegations in paragraph 27 set forth legal conclusions for which no response is necessary.

28. NJTA admits paragraph 28 requests certain relief from the Court, but denies that Plaintiff is entitled to such relief.

WHEREFORE, NJTA respectfully requests that this Court enter judgment in its favor and against OYC, dismissing the First Count of the Complaint with prejudice, and awarding NJTA reasonable attorneys' fees, cost of suit, and any and all such other and further relief as the Court may deem just and proper.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrines of release, waiver, consent, laches and/or estoppel.

THIRD AFFIRMATIVE DEFENSE

NJTA's United States Service Mark Registration No. 2,452,349 for the Garden State Parkway logo has become incontestable.

FOURTH AFFIRMATIVE DEFENSE

NJTA's Garden State Parkway logo is inherently distinctive and/or has acquired distinctiveness.

FIFTH AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrine of unclean hands based upon Plaintiff's conduct, which includes intentionally and admittedly copying the NJTA's Garden State Parkway logo and building an entire branding and marketing scheme designed to invoke the Garden State Parkway roadway and its import to the State of New Jersey.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any, are the result of their own conduct.

SEVENTH AFFIRMATIVE DEFENSE

NJTA reserves the right prior to trial or at trial of this matter to interpose any and all additional objections and/or further defenses to the Complaint.

WHEREFORE, NJTA respectfully requests that this Court enter judgment in its favor and against OYC, dismissing the Complaint with prejudice, and awarding NJTA reasonable attorneys' fees, cost of suit, and any and all such other and further relief as the Court may deem just and proper.

CHIESA SHAHINIAN & GIANTOMASI PC
Attorneys for Defendant/Counterclaim Plaintiff

By: /s/ Ronald L. Israel
RONALD L. ISRAEL

Dated: November 23, 2016

COUNTERCLAIM

Plaintiff/Counterclaim Defendant DW Vineyards LLC's d/b/a Old York Cellars ("Counterclaim Defendant" or "OYC") is unlawfully marketing a brand of wines under the name What Exit Wines, whose entire branding scheme is intended to, and does, infringe Counterclaim Plaintiff, New Jersey Turnpike Authority's (hereinafter "NJTA") famous Garden State Parkway Logo. Counterclaim Defendant's wine bottle labels are even designed to look like highway signs. Counterclaim Defendant's logo, as well as its entire branding scheme, serves to dilute the strength of NJTA's famous mark, raises public policy concerns (as NJTA operates two roadways and is charged with ensuring the safety of motorists) and is likely to cause confusion, mistake or deception as to the source of Counterclaim Defendant's goods.

Thus, NJTA, pursuant to FED. R. CIV. P. 13, by way of counterclaim against Counterclaim Defendant, alleges as follows:

NATURE OF ACTION

1. This is an action for service mark infringement, service mark dilution, unfair competition and other relief arising under the trademark and service mark laws of the United States, specifically 15 U.S.C. § 1051 *et seq.* (hereinafter "Lanham Act") and the laws of the State of New Jersey. Counterclaim Defendant has willfully and blatantly misappropriated NJTA's registered trademark and service mark in an effort to trade upon the fame and goodwill associated with NJTA's mark.

THE PARTIES

2. NJTA is a quasi-governmental agency existing under the laws of the State of New Jersey with its principal place of business located at 1 Turnpike Plaza, Woodbridge, New Jersey 07095.

3. Upon information and belief, Counterclaim Defendant is a limited liability company organized and existing under the laws of the state of New Jersey with a principal place of business located at 80 Old York Road, Ringoes, New Jersey 08551.

JURISDICTION, VENUE AND STANDING

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 because NJTA's claims arise under the trademark and service mark laws of the United States. This Court also has supplemental jurisdiction pursuant to 28 U.S.C. §§ 1338(b) and 1367 over NJTA's claims that arise under the laws of the State of New Jersey.

5. This Court has personal jurisdiction over the parties to this action because (i) NJTA's claims arise in this judicial district, and (ii) each party is located within and does business in this judicial district.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because NJTA's claims arise in this judicial district, each party does business in this judicial district, witnesses and evidence are located within this judicial district, and the acts complained of herein have all taken place in this judicial district.

7. NJTA has standing to bring this action pursuant to 15 U.S.C. §1114(1), 15 U.S.C. §1125(a)(1) and N.J.S.A. §27:23-5(d).

NJTA'S GARDEN STATE PARKWAY LOGO

8. NJTA is the owner of the iconic Garden State Parkway Logo, which mark it (or its predecessor the New Jersey Highway Authority) has been using in connection with its highway management and maintenance services and travel information services since at least as early as 1956. NJTA's Garden State Parkway Logo is depicted below:



9. NJTA's Garden State Parkway Logo is utilized in connection with NJTA's operation of one of the most iconic and well known highways in the United States, the Garden State Parkway. The Garden State Parkway opened in 1954 and stretches from the New York State line down to the end of the New Jersey Shore. The Garden State Parkway is one of the most widely used and well known roadways in the United States and is travelled by many millions of people each year. NJTA's Garden State Parkway Logo has become one of the most symbolic fixtures within the State of New Jersey as an indicator of NJTA's services, including managing and maintaining the Garden State Parkway.

10. NJTA is the owner of United States Service Mark Registration No. 2,452,349 for its Garden State Parkway Logo in International Class 37 for highway management and maintenance services and in Class 39 for travel information services. This registration achieved incontestable status on March 9, 2007. A printout from the United States Patent & Trademark Office's Online Database of NJTA's incontestable registration is attached hereto as **Exhibit A** and submitted into evidence on behalf of NJTA. NJTA is also the owner of United States Trademark Registration No. 4,964,765 for its Garden State Parkway Logo in International Class 25 for t-shirts and United States Trademark Registration No. 4,964,764 for its Garden State Parkway Logo in International Class 21 for coffee mugs. Printouts from the United States Patent & Trademark Office's Online Database of NJTA's Class 25 and 21 registrations are attached hereto as **Exhibit B** and **Exhibit C** and submitted into evidence on

behalf of NJTA. NJTA's logo was registered in black and white without any claim to a specific color (which serves to protect the mark in any color format, including NJTA's uniformly used and universally recognized green and yellow color format depicted in Paragraph 8 above).

11. NJTA has invested a substantial amount of time, money and other resources promoting, marketing and publicizing its services provided under the Garden State Parkway Logo mark. As a result of NJTA's substantial marketing and promotional efforts, the Garden State Parkway Logo mark has acquired substantial consumer recognition and goodwill and has achieved the status of being a famous mark. The Garden State Parkway Logo mark has become an important source indicator which identifies NJTA's primary services – including managing and maintaining a high quality roadway – to consumers and motorists, both in the State of New Jersey and elsewhere throughout the United States. Furthermore, NJTA has developed a licensing program for the production and sale of a wide variety of authorized merchandise featuring (among other marks owned by NJTA) the Garden State Parkway Logo. T-shirts, coffee mugs, tote bags, magnets, key chains and wildflower seeds bearing the Garden State Parkway Logo are currently available for purchase under this licensing program, and additional products bearing the Garden State Parkway Logo will be made available in the future. For all of the foregoing reasons, the Garden State Parkway Logo mark is an exceedingly valuable asset of NJTA.

12. Over the years, many third parties have attempted to trade off of the fame and notoriety associated with NJTA's Garden State Parkway Logo, and NJTA has actively and successfully policed against infringing third-party uses of its mark. NJTA has obtained nearly universal compliance by those third parties to whom it has raised objections. NJTA's successful policing efforts against third parties (who have sold goods and provided services in a

wide variety of industries) have served to further enhance the strength of NJTA's Garden State Parkway Logo.

COUNTERCLAIM DEFENDANT'S ORIGINAL INFRINGEMENT

13. Subsequent to NJTA's adoption and substantial use of its Garden State Parkway Logo, and subsequent to NJTA's mark acquiring public recognition as identifying and distinguishing NJTA's goods and services from those of others, Counterclaim Defendant began using a logo mark that blatantly copied and appropriated NJTA's Garden State Parkway Logo mark in connection with Counterclaim Defendant's sale of a New Jersey-themed wine that is sold under the New Jersey themed name and mark "What Exit Wines." Counterclaim Defendant utilized this logo on its website and social media pages. Counterclaim Defendant's original logo mark is depicted below:



14. There is no question that Counterclaim Defendant's original logo was directly copied and appropriated from NJTA's famous Garden State Parkway Logo. The structure, green and yellow color scheme, and design elements of Counterclaim Defendant's logo were intentionally and identically copied from the Garden State Parkway Logo.

15. Counterclaim Defendant was unquestionably trading upon the tremendous fame and goodwill associated with NJTA's Garden State Parkway Logo, which mark is one of the most well-known symbols in the State of New Jersey and is well-known throughout the

country. Side by side comparisons of NJTA's Garden State Parkway Logo mark and Counterclaim Defendant's original logo are depicted below:

NJTA's Mark



Counterclaim Defendant's Original Mark



16. It is of particular importance that consumers do not mistakenly believe that NJTA (that operates two extremely iconic roadways and is charged with ensuring the safety of motorists both from the state of New Jersey and elsewhere throughout the country) is sponsoring, endorsing or in any way affiliated with the sale of alcoholic beverages bearing its logo. Counterclaim Defendant's use of a logo mark that was clearly appropriated from NJTA's Garden State Parkway Logo in connection with the sale of alcoholic beverages tarnishes the reputation and image of NJTA's mark and raises public policy concerns. The association of the Garden State Parkway Logo with the sale of alcoholic beverages is detrimental to the goodwill and reputation that NJTA has worked hard to build.

NJTA'S NOTICE TO COUNTERCLAIM DEFENDANT

17. In June of 2015, NJTA learned that Counterclaim Defendant was using the infringing original logo mark in connection with its sale of wine and its advertising, marketing and promotional efforts. On July 9, 2015, NJTA sent Counterclaim Defendant a demand letter requesting that Counterclaim Defendant immediately discontinue any and all use of the infringing logo mark in connection with its goods.

18. After not receiving any response whatsoever from Counterclaim Defendant to NJTA's first letter, NJTA sent Counterclaim Defendant a second demand letter on August 12, 2015.

19. On or around August 18, 2015, NJTA's attorney received a letter from an attorney representing Counterclaim Defendant indicating Counterclaim Defendant's refusal to comply with NJTA's demands. NJTA sent a responsive letter to Counterclaim Defendant's counsel on September 8, 2015 wherein NJTA once again set forth the reasons why Counterclaim Defendant must discontinue use of the infringing mark. The parties then corresponded in writing several times, but Counterclaim Defendant did not agree to comply with NJTA's demands.

20. On December 16, 2015, NJTA sent Counterclaim Defendant a substantive letter together with a draft complaint and indicated to Counterclaim Defendant that although NJTA would prefer to resolve the matter amicably, unless Counterclaim Defendant agreed to discontinue use of the infringing mark, NJTA would have no other choice but to commence a lawsuit. Over the ensuing months, Counterclaim Defendant strung NJTA along by repeatedly indicating that it would change the infringing mark in a manner that would alleviate NJTA's concerns. By way of example, on February 3, 2016, Counterclaim Defendant indicated that it was developing new branding that would be *substantially distinct* from that of NJTA. NJTA elected not to file suit against Counterclaim Defendant based on this representation. Counterclaim Defendant delayed in bad faith and for the sole purpose of avoiding a lawsuit.

21. On April 18, 2016, Counterclaim Defendant sent NJTA its new proposed logo (hereinafter "2016 Logo"), depicted below:



22. On April 25, 2016, NJTA indicated to Counterclaim Defendant that the new proposed 2016 Logo was problematic for several reasons, but proposed potential solutions for resolving the dispute amicably. NJTA received no response to this communication for nearly four months.

23. On August 24, 2016, Counterclaim Defendant's attorney reached out to NJTA to incorrectly assert that since NJTA had expressed no issue with OYC's proposed rebrand in April, it had moved forward with implementing its new branding scheme. On August 29, 2016, NJTA responded by pointing to the objections raised in April.

24. On September 9, 2016, Counterclaim Defendant sent NJTA a letter setting forth arguments as to why its new 2016 Logo did not create a likelihood of confusion. On September 14, 2016, NJTA learned that not only had Counterclaim Defendant gone forward with the new 2016 Logo, in spite of NJTA's prior objections, but it simply switched out the prior logo for the 2016 Logo and made no other changes to its branding scheme, to which NJTA had previously objected. On September 20, 2016, NJTA sent a substantive response refuting the arguments raised in Counterclaim Defendant's September 9 letter.

COUNTERCLAIM DEFENDANT'S CURRENT AND CONTINUED INFRINGEMENT

25. Counterclaim Defendant's 2016 Logo, particularly when coupled with its branding and marketing scheme, is intentionally and knowingly infringing on NJTA's rights in and to its Garden State Parkway Logo. Counterclaim Defendant's intentional infringement is especially apparent as its entire branding and marketing scheme is designed to invoke the

Garden State Parkway roadway and its import to the State of New Jersey. For example, Counterclaim Defendant's wine is sold under the mark "What Exit Wines." There is a long tradition of New Jersey residents identifying with specific exits (very often the exit closest to their home) on the Garden State Parkway. In addition, certain of Counterclaim Defendant's wine bottles feature a yellow rectangle that bears an arrow pointing downward and the wording "Exit Only" (all of which clearly resembles a road sign of the type one would encounter on the Garden State Parkway). Counterclaim Defendant also advertises its wine bottles as being available to consumers bearing Garden State Parkway exit numbers and/or New Jersey cities or towns that are located off specific exits. By depicting the specific exit numbers and/or corresponding New Jersey cities/towns on Counterclaim Defendant's labels that resemble an exit sign used on the Garden State Parkway, the commercial impression created by Counterclaim Defendant's labels and marketing scheme is undeniably that of the Garden State Parkway.

26. Though Counterclaim Defendant told NJTA that it would develop a new branding scheme that was substantially distinct from that of NJTA, it did not do so. It admittedly changed its logo to the updated version, but the 2016 Logo is a far cry from substantially distinct. Furthermore, the respective logos cannot be considered in a vacuum. When viewed in context on Counterclaim Defendant's wine bottle labels and marketing materials, the Garden State Parkway and its iconic logo are immediately called to mind. An image of one of Counterclaim Defendant's infringing wine bottles is set forth below:



27. When coupled with Counterclaim Defendant’s overall branding scheme, it is clear that Counterclaim Defendant had no intention of ceasing to improperly connote the famous Garden State Parkway Logo – and the roadway managed and maintained by NJTA – in its marketing scheme, nor did it have any intention of ceasing or curbing its pattern of activity designed to increase the likelihood of confusion by connecting its products with NJTA and the Garden State Parkway. Furthermore, the modification to the logo mark did nothing to alleviate the public policy concerns inherent in associating a highway with the sale of alcoholic beverages. The use of this New Jersey themed branding scheme further demonstrates that Counterclaim Defendant’s 2016 Logo continues to be intentionally designed to immediately connote the iconic Garden State Parkway Logo – and the roadway managed and maintained by NJTA – both in appearance and commercial impression, and Counterclaim Defendant is engaged in a pattern of activity designed to increase the likelihood of confusion by connecting its products with NJTA and the Garden State Parkway.

28. In addition to the foregoing, Counterclaim Defendant has on several occasions depicted NJTA’s actual Garden State Parkway Logo and referenced the Garden State Parkway in its advertising materials distributed on social media. Perhaps the most egregious instance of Counterclaim Defendant’s use of NJTA’s Garden State Parkway Logo was a Facebook post that depicted NJTA’s Logo together with the wording “Exit ?,” which post was clearly

designed to make the connection between NJTA's Logo and Counterclaim Defendant's products and marketing scheme. A screen shot of such post is attached hereto at **Exhibit D**. The use of NJTA's Garden State Parkway Logo in Counterclaim Defendant's advertising materials leaves no doubt whatsoever that Counterclaim Defendant is attempting to evoke NJTA's mark through its use of the infringing logo.

29. Counterclaim Defendant's 2016 Logo also appears prominently on Counterclaim Defendant's website and social media pages (such as Facebook®).

30. NJTA's famous Garden State Parkway Logo that has been in use since 1956 is entitled to a wide scope of protection and therefore can easily bridge any gap between the respective goods and services. The fact that NJTA may not itself be selling wine under its mark is immaterial given the fame and iconic status of the Garden State Parkway Logo. Consumers who encounter Counterclaim Defendant's confusingly similar 2016 Logo as used in connection with wine will mistakenly assume that Counterclaim Defendant's use of the mark is authorized by NJTA.

31. Counterclaim Defendant's use of its 2016 Logo is so similar to NJTA's Garden State Parkway Logo that it is likely to cause confusion, mistake or deception as to the source or origin of Counterclaim Defendant's goods. As a result of Counterclaim Defendant's use of its 2016 Logo in conjunction with Counterclaim Defendant's overall branding scheme, consumers are likely to believe that Counterclaim Defendant's goods are provided by, or sponsored by, or approved by, or licensed by, or affiliated with, or in some other way legitimately connected to NJTA. In addition, Counterclaim Defendant's use of its 2016 Logo and its overall branding scheme serves to dilute the strength of NJTA's famous mark.

32. The acts of Counterclaim Defendant complained of hereinabove are unlawful, willful and knowingly performed with the intent and result of injuring NJTA.

COUNT I

TRADEMARK & SERVICE MARK INFRINGEMENT

33. NJTA repeats and realleges each and every allegation contained in paragraphs 1-32 of the Counterclaim as though fully set forth herein.

34. Counterclaim Defendant, through its conduct described above, is selling in interstate commerce goods under a mark that is a colorable imitation of NJTA's registered Garden State Parkway Logo, which is likely to cause confusion or mistake and/or to deceive in violation of the Lanham Act Section 32(1) (15 U.S.C. § 1114(1)).

35. Counterclaim Defendant has committed such acts of infringement willfully and with full knowledge of NJTA's prior use and registration of, and rights in and to, its Garden State Parkway Logo trademark and service mark.

36. As a result of Counterclaim Defendant's acts of infringement, NJTA has suffered and will continue to suffer serious and irreparable harm for which there is no adequate remedy at law.

COUNT II

UNFAIR COMPETITION UNDER SECTION 43(a) OF THE LANHAM ACT

37. NJTA repeats and realleges each and every allegation contained in paragraphs 1-36 of the Counterclaim as though fully set forth herein.

38. Counterclaim Defendant, through its conduct as described above, is selling goods utilizing a logo mark that is a colorable imitation of NJTA's protectable Garden State Parkway Logo in connection with an overall branding scheme designed to call to mind the

Garden State Parkway, which is likely to cause confusion or mistake and/or to deceive in violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

39. Counterclaim Defendant has committed such acts of false designation of origin and false description and representation willfully and with full knowledge of NJTA's prior use of, and rights in, its Garden State Parkway Logo.

40. As a result of Counterclaim Defendant's acts of unfair competition, NJTA has suffered and will continue to suffer serious and irreparable harm for which there is no adequate remedy at law.

COUNT III

FEDERAL SERVICE MARK DILUTION

41. NJTA repeats and realleges each and every allegation contained in paragraphs 1-40 of the Counterclaim as though fully set forth herein.

42. As a result of NJTA's long-term, continuous, and extensive use and promotion of its Garden State Parkway Logo mark since 1956, the Garden State Parkway Logo mark is, and was prior to Counterclaim Defendant's misconduct alleged herein, distinctive and famous in New Jersey and the United States, enjoying substantial recognition, goodwill and association with NJTA. The public distinguishes NJTA's goods and services from those of others on the basis of the Garden State Parkway Logo, which mark has gained strong public recognition and is eligible for protection against dilution pursuant to 15 U.S.C. § 1125(c).

43. Counterclaim Defendant's use of the infringing 2016 Logo in connection with its overall branding scheme designed to call to mind the Garden State Parkway as alleged herein is likely to dilute, and has diluted, the strength and value of the Garden State Parkway Logo mark, and Counterclaim Defendant's conduct has eroded and will continue to erode the

extent to which the Garden State Parkway Logo mark is associated with NJTA, all to the commercial detriment of NJTA.

44. Counterclaim Defendant's use of the infringing 2016 Logo and overall branding scheme designed to call to mind the Garden State Parkway in the unfair and wrongful manner alleged herein is likely to tarnish and/or otherwise degrade, and has tarnished and otherwise degraded, the value of the Garden State Parkway Logo mark, to the commercial detriment of NJTA.

45. Counterclaim Defendant's dilution of the distinctive quality of the Garden State Parkway Logo mark has caused, and if not enjoined will continue to cause, irreparable harm to NJTA. NJTA therefore is entitled to injunctive relief.

46. Counterclaim Defendant's aforesaid wrongful conduct has been willful, wanton and malicious and done with intent. NJTA is therefore entitled to an award of its reasonable attorney's fees and costs, and treble its actual damages, pursuant to Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a). NJTA is also entitled to, among other things, the cost of corrective advertising.

COUNT IV

COMMON LAW SERVICE MARK INFRINGEMENT AND UNFAIR COMPETITION

47. NJTA repeats and realleges each and every allegation contained in paragraphs 1-46 of the Counterclaim as though fully set forth herein.

48. Counterclaim Defendant's aforesaid acts constitute infringement of NJTA's rights in its common law Garden State Parkway Logo mark and tend to falsely describe or represent that Counterclaim Defendant's goods are provided by, or sponsored by, or approved by, or licensed by, or affiliated with or in some other way legitimately connected to NJTA and

are of the same character, nature and quality as the goods and services of NJTA, thereby damaging NJTA and NJTA's reputation.

49. The acts of Counterclaim Defendant complained of hereinabove constitute acts of unfair competition against NJTA under the common law of the State of New Jersey, which acts have been committed knowingly and willfully and have injured NJTA in its trade and business.

50. By reason of the aforesaid acts, Counterclaim Defendant has caused damage to NJTA and to the goodwill associated with NJTA's mark.

COUNT V

UNFAIR COMPETITION UNDER N.J.S.A. § 56:4-1

51. NJTA repeats and realleges each and every allegation contained in paragraphs 1-50 of the Counterclaim as though fully set forth herein.

52. Counterclaim Defendant's unauthorized use of the infringing 2016 Logo in connection with its overall branding scheme designed to call to mind the Garden State Parkway falsely indicates that Counterclaim Defendant is connected with, sponsored, endorsed, authorized, approved by or affiliated with NJTA, which it is not.

53. Counterclaim Defendant's unauthorized use of the infringing 2016 Logo in connection with its overall branding scheme designed to call to mind the Garden State Parkway is likely to cause confusion, mistake or deception as to the source or affiliation of Counterclaim Defendant's goods.

54. Counterclaim Defendant's unauthorized use of the infringing 2016 Logo in connection with its overall branding scheme designed to call to mind the Garden State Parkway

in connection with Counterclaim Defendant's goods allows Counterclaim Defendant to receive the benefit of NJTA's goodwill, which NJTA has established at great labor and expense.

55. The acts of Counterclaim Defendant complained of herein constitute unfair competition in violation of the New Jersey Unfair Competition Statute (N.J.S.A. § 56: 4-1) and the common law of the State of New Jersey.

56. The acts of Counterclaim Defendant complained of herein were committed willfully.

57. As a result of Counterclaim Defendant's actions, Counterclaim Defendant is being unjustly enriched and NJTA has been harmed in an amount to be determined at trial and will continue to be harmed and will suffer irreparable injury unless Counterclaim Defendant is enjoined from the foregoing actions.

PRAYER FOR RELIEF

WHEREFORE, NJTA demands judgment in its favor and against Counterclaim Defendant as follows:

1. That Counterclaim Defendant, and its officers, agents, servants, distributors, affiliates, employees, attorneys, agents and representatives and all those in privity or acting in concert with the Counterclaim Defendant, and each of them, be permanently enjoined and restrained from, directly or indirectly:

(a) Using either of the infringing logo marks set forth above or any other marks confusingly similar thereto, alone or in combination with other words, names, styles, titles, designs or marks in connection with the provision of their goods and services;

- (b) Using in any other way any other marks or designations so similar to NJTA's aforesaid Garden State Parkway Logo mark as to be likely to cause confusion, mistake or deception;
- (c) Falsely designating the origin, sponsorship, or affiliation of the Counterclaim Defendant's goods in any manner;
- (d) Otherwise competing unfairly with NJTA in any manner;
- (e) Using any words, names, styles, designs, titles, designations, or marks which create a likelihood of injury to the business reputation of NJTA and the goodwill associated therewith;
- (f) Using any trade practices whatsoever including those complained of herein, which tend to unfairly compete with or injure NJTA's business and goodwill pertaining thereto;
- (g) Using any words, names, styles, designs, titles or marks that create a likelihood of dilution of NJTA's Garden State Parkway Logo mark and the goodwill associated therewith; and
- (h) Continuing to perform in any manner whatsoever any of the acts complained of in this complaint.

2. That Counterclaim Defendant be required to pay to NJTA compensatory damages for the injuries sustained by NJTA in consequence of the unlawful acts alleged herein and that such damages be trebled pursuant to 15 U.S.C. § 1117 because of the willful and unlawful acts as alleged herein.

3. That Counterclaim Defendant be required to account for and pay over to NJTA all gains, profits and advantages derived by them from the unlawful activities alleged herein.

4. That Counterclaim Defendant be required to deliver for destruction all merchandise, stationary, signs, advertisements, promotional flyers, cards, brochures, menus, promotional materials and any other materials which bear one or more of the infringing logo marks set forth above together with all plates, molds, matrices and other means and materials for making or reproducing the same.

5. That Counterclaim Defendant be required to pay to NJTA all of its litigation expenses, including but not limited to reasonable attorney's fees and the costs of this action.

6. That NJTA be awarded such other and further relief as the Court may deem just and proper.

CHIESA SHAHINIAN & GIANTOMASI PC
Attorneys for Defendant/Counterclaim Plaintiff

By: /s/ Ronald L. Israel
RONALD L. ISRAEL

Dated: November 23, 2016

DESIGNATION OF TRIAL COUNSEL

Ronald L. Israel, Esq. is hereby designated as trial counsel for Defendant/Counterclaim Plaintiff.

CHIESA SHAHINIAN & GIANTOMASI PC
Attorneys for Defendant/Counterclaim Plaintiff

By: /s/ Ronald L. Israel
RONALD L. ISRAEL

Dated: November 23, 2016

CERTIFICATION PURSUANT TO L. CIV. R. 11.2

I certify that this matter is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding; no other action, arbitration or administrative proceeding is contemplated to my knowledge; and I know of no other parties who should be joined in this action at this time.

CHIESA SHAHINIAN & GIANTOMASI PC
Attorneys for Defendant/Counterclaim Plaintiff

By: /s/ Ronald L. Israel
RONALD L. ISRAEL

Dated: November 23, 2016

CERTIFICATION OF SERVICE

I certify that the within Answer and Counterclaim was served on this date upon all counsel of record via ECF filing.

CHIESA SHAHINIAN & GIANTOMASI PC
Attorneys for Defendant/Counterclaim Plaintiff

By: /s/ Ronald L. Israel
RONALD L. ISRAEL

Dated: November 23, 2016

EXHIBIT A



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Word Mark	GARDEN STATE PARKWAY
Goods and Services	IC 037. US 100 103 106. G & S: HIGHWAY MANAGEMENT AND MAINTENANCE SERVICES. FIRST USE: 19560000. FIRST USE IN COMMERCE: 19560000
	IC 039. US 100 105. G & S: TRAVEL INFORMATION SERVICES. FIRST USE: 19560000. FIRST USE IN COMMERCE: 19560000
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	01.17.11 - Maps of states of the United States, excluding Texas 26.01.04 - Circles with two breaks or divided in the middle 26.01.18 - Circles, three or more concentric; Concentric circles, three or more; Three or more concentric circles
Serial Number	75575699
Filing Date	October 22, 1998
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	February 27, 2001
Registration Number	2452349
Registration Date	May 22, 2001
Owner	(REGISTRANT) NEW JERSEY HIGHWAY AUTHORITY STATE AGENCY NEW JERSEY The Garden State Arts Center P.O. Box 5050 Woodbridge NEW JERSEY 070955050 (LAST LISTED OWNER) NEW JERSEY TURNPIKE AUTHORITY STATE AGENCY NEW JERSEY P.O. BOX 5042 WOODBRIDGE NEW JERSEY 07095
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Peter Nussbaum

Type of Mark SERVICE MARK
Register PRINCIPAL-2(F)-IN PART
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20110728.
Renewal 1ST RENEWAL 20110728
Live/Dead Indicator LIVE
Distinctiveness
Limitation Statement as to "GARDEN STATE PARKWAY"

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EXHIBIT B



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Word Mark GARDEN STATE PARKWAY

Goods and Services IC 025. US 022 039. G & S: t-shirts. FIRST USE: 20160304. FIRST USE IN COMMERCE: 20160304

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 01.17.11 - Maps of states of the United States, excluding Texas
 26.01.02 - Circles, plain single line; Plain single line circles
 26.01.17 - Circles, two concentric; Concentric circles, two; Two concentric circles
 26.01.21 - Circles that are totally or partially shaded.
 26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s)
 26.17.05 - Bands, horizontal; Bars, horizontal; Horizontal line(s), band(s) or bar(s); Lines, horizontal
 26.17.08 - Band, one (geometric); Bar, one; Line, one; One line, band, bar or angle

Serial Number 85381415

Filing Date July 26, 2011

Current Basis 1A

Original Filing Basis 1B

Published for Opposition February 12, 2013

Registration Number 4964765

Registration Date May 24, 2016

Owner (REGISTRANT) New Jersey Turnpike Authority quasi-state government agency NEW JERSEY
 P.O. Box 5042 Woodbridge NEW JERSEY 07095
 Peter Nussbaum

Attorney of Record

Prior Registrations 2452349

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GARDEN STATE" APART FROM THE MARK AS SHOWN

Description of Mark Color is not claimed as a feature of the mark. The mark consists of a circular design comprised of a thin outer ring, a thicker middle ring and an interior circle. The wording "GARDEN STATE" appears within the upper portion of the middle ring. The design features a stylized rendition of the State of New Jersey with a line running through the image from top to bottom. The word "PARKWAY" appears within a rectangle that is superimposed over the middle of the stylized rendition of the State of New Jersey and runs across the middle of the interior circle, extending to the interior ring.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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EXHIBIT C



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Word Mark GARDEN STATE PARKWAY

Goods and Services IC 021. US 002 013 023 029 030 033 040 050. G & S: Coffee mugs. FIRST USE: 20160222. FIRST USE IN COMMERCE: 20160222

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 01.17.11 - Maps of states of the United States, excluding Texas
 26.01.02 - Circles, plain single line; Plain single line circles
 26.01.21 - Circles that are totally or partially shaded.
 26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s)
 26.17.05 - Bands, horizontal; Bars, horizontal; Horizontal line(s), band(s) or bar(s); Lines, horizontal
 26.17.08 - Band, one (geometric); Bar, one; Line, one; One line, band, bar or angle

Serial Number 85381405

Filing Date July 26, 2011

Current Basis 1A

Original Filing Basis 1B

Published for Opposition February 12, 2013

Registration Number 4964764

Registration Date May 24, 2016

Owner (REGISTRANT) New Jersey Turnpike Authority quasi-state government agency NEW JERSEY P.O. Box 5042 Woodbridge NEW JERSEY 07095

Attorney of Record Peter Nussbaum

Prior 2452349

Registrations

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GARDEN STATE" APART FROM THE MARK AS SHOWN

Description of Mark Color is not claimed as a feature of the mark. The mark consists of a circular design comprised of a thin outer ring, a thicker middle ring and an interior circle. The wording "GARDEN STATE" appears within the upper portion of the middle ring. The design features a stylized rendition of the State of New Jersey with a line running through the image from top to bottom. The word "PARKWAY" appears within a rectangle that is superimposed over the middle of the stylized rendition of the State of New Jersey and runs across the middle of the interior circle, extending to the interior ring.

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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EXHIBIT D

What Exit Wines
August 21, 2013

What Exit off the Garden State Parkway do you take when you are headed for a beach day? What is your FAVORITE Jersey shore beach?
#WhatExitWednesday

EXIT ?

Len Wolin, MaryAnn Schumacher and 6 others like this.

Steven Rycyk Asbury Park ...But only 'cause of this girl I used to meet there.
1 - August 21, 2013 at 6:34pm

MaryAnn Schumacher Exit 4, Cape May, head for Lighthouse Beach.
1 - August 21, 2013 at 4:52pm

Adam Tizio Exit 63
1 - August 21, 2013 at 10:49am

Glenn A. Miller 98 exit Belmar!!!
August 25, 2013 at 6:06pm

Caitlyn Lorraine Exit 98 - Belmar!!
August 21, 2013 at 9:25am