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*Attorneys for Defendant Diesel Power Gear, LLC*

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

<p>DIESEL S.p.A.; and DIESEL U.S.A., INC.,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>DIESEL POWER GEAR, LLC,</p> <p style="text-align: center;">Defendant.</p>	<p><b>DECLARATION OF CALEB PERKINS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT</b></p> <p>Case No.: 1:19-cv-09308-JSR</p>
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I, Caleb Perkins, hereby declare:

1. I am over the age of 18.
2. I am the Chief Operating Officer for Defendant Diesel Power Gear, LLC (“Diesel Power Gear”) and have been in this position since 2019.
3. I have personal knowledge of the matters set forth herein, or have made reasonable inquiry of Plaintiff Diesel Power Gear, LLC’s (“DPG”) personnel and/or records to obtain knowledge of the matters set forth herein.

4. Diesel Power Gear’s principal revenue stream is sales of apparel and gear promoting and used for recreational diesel trucks.
5. To incentivize diesel truck enthusiasts to purchase such apparel and gear, Diesel Power Gear provides an entry into a drawing to win a custom-built diesel truck for every five dollars spent on apparel and gear on dieselpowergear.com.
6. Apparel is a secondary consideration for customers of Diesel Power Gear. What they really want is to win a cool diesel truck.
7. Other than de minimis sales at a brick and mortar storefront in Woods Cross, Utah, all of Diesel Power Gear’s sales of apparel and gear are consummated through dieselpowergear.com.
8. Since 2013, under this business model Diesel Power Gear has given away a substantial number of custom-built diesel trucks (often given away monthly).
9. All apparel and gear sold on dieselpowergear.com is diesel-truck themed.
10. Diesel Power Gear’s marketing targets diesel truck enthusiasts.
11. Apparel sold on dieselpowergear.com is modestly priced. The following prices are typical:


<b>Item</b>	<b>Price Range on dieselpowergear.com</b>
t-shirt	\$30
hoodie	\$55
jeans	\$60
hat	\$30

12. Every use of “diesel” on dieselpowergear.com—including in the URL, the webpage title, apparel product names, and on apparel—is a reference to diesel trucks.

13. The landing page for dieselpowergear.com has always presented, as its primary feature, information about previous or current giveaways of one or more custom-built diesel trucks.
14. In 2017, Dave Sparks and Dave Kiley released a book titled “The Diesel Brothers: A Truckin’ Awesome Guide to Trucks and Life,” which is about diesel trucks.
15. I have reviewed Plaintiffs’ website on several occasions. Plaintiffs’ apparel is expensive. Many pairs of jeans Plaintiffs’ jeans cost more than \$200 and even \$300 (and some more than \$400 and even \$500). The price for many t-shirts is around \$150.
16. “DIESEL AF” is a phrase indicating that something associated with diesel trucks is cool. “AF” means “as fuck,” so the phrase “DIESEL AF” means, literally, “diesel as fuck,” and figuratively means something like, “I like diesel trucks and something is good or desirable if it is associated with diesel trucks.”
17. Diesel Power Gear’s “DIESEL AF” t-shirt is a parody of a Supreme brand t-shirt. The Supreme brand t-shirt retails for over \$1,000.
18. Diesel Power Gear never used “diesel,” e.g., in “diesel power gear,” with any intent to benefit from any goodwill or other value that Plaintiffs may have in their DIESEL-related trademarks.
19. Diesel Power Gear was not aware of Plaintiffs and their claimed rights in DIESEL until years after Diesel Power Gear had begun using “diesel power gear.”
20. Diesel Power Gear’s Profit & Loss Statements show that Diesel Power Gear’s profit for 2015-2019 was:

<b>Year</b>	<b>Profit</b>
2019	\$430,783.65
2018	\$567,587.43

2017	\$461,678.64
2016	\$192,831.91
2015	\$203,409.98

21. Because Diesel Power Gear’s business model is using truck giveaways and marketing to induce apparel and gear purchases through dieselpowergear.com, it is reasonable to allocate profit pro rata by the revenue from a particular product.
22. Defendant’s headquarters at 1955 S 1800 W, Woods Cross, Utah includes offices, a large shop/warehouse for diesel truck work, a warehouse, and a small brick-and-mortar storefront that sells a small subset of the products available through dieselpowergear.com.
23. The front of Diesel Power Gear’s headquarters is marked with the DP lightning logo (  ), two images of diesel trucks, the URL for one of Diesel Power Gear’s websites (dieselsellerz.com), and “Sparks Motors.”
24. When Diesel Power Gear received notification(s) from Plaintiffs of alleged trademark infringement, Diesel Power Gear undertook performed a good faith legal analysis, and determined thereby that its use of “diesel” was not infringing, and made the reasonable decision to continue to use “diesel” in good faith.
25. In its online marketing, Diesel Power Gear bids on a number of search engine keywords including but not limited to “diesel clothing,” “diesel shirts,” “diesel tees,” and “diesel apparel.”

**I declare under penalty of perjury that the foregoing is true and correct.**

Date Executed: 10/19/2020   
Caleb Perkins