

1 BENJAMIN C. JOHNSON (SBN: 218518)  
 benjamin.johnson@mga.com  
 2 JOSEPH A. LOPEZ (SBN: 268511)  
 joseph.lopez@mga.com  
 3 MGA ENTERTAINMENT, INC.  
 4 16380 Roscoe Blvd  
 5 Van Nuys, CA 91406  
 Telephone: (818) 894-2525 ext. 6788  
 6 Fax: (818) 895-0771

7 Attorneys for Plaintiff  
 8 MGA Entertainment, Inc.

9 **UNITED STATES DISTRICT COURT**  
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11 MGA ENTERTAINMENT, INC., a  
 12 California corporation

13 Plaintiff,

14 v.

15  
 16  
 17 LOUIS VUITTON MALLETTIER, S.A., a  
 French société anonyme; and DOES 1  
 18 through 10, inclusive.

19 Defendants.  
 20

**Case No. 2:18-cv-10758**

**COMPLAINT FOR:**

**1. DECLARATORY JUDGMENT**

**DEMAND FOR JURY TRIAL**

21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

1 Plaintiff, MGA ENTERTAINMENT, INC. (hereinafter referred to as  
2 “Plaintiff” or “MGA”) for its Complaint herein alleges as follows:

3 **INTRODUCTION**

4 1. This action involves a claim for declaratory judgment pursuant to 28  
5 U.S.C. §§ 2201(a) and 2202, to resolve an actual controversy within this Court’s  
6 jurisdiction. Specifically, MGA seeks a declaration that both the name “Pooey  
7 Puitton,” and the associated toy product with which it is used, do not infringe upon or  
8 dilute any of the trademarks or other intellectual property rights of defendant Louis  
9 Vuitton, S.A. (“Louis Vuitton”), is protected fair use, and/or is protected parody.

10 **JURISDICTION AND VENUE**

11 2. This Court has federal subject matter jurisdiction pursuant to 28 U.S.C.  
12 §§ 1331 and 1338(a) because it arises under the laws of the United States, specifically  
13 a request for declaratory judgment under 28 U.S.C. §§ 2201(a) and 2202, and that  
14 concern issues of trademark under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*

15 3. Personal jurisdiction exists over Defendants in this judicial district  
16 because Defendants regularly conduct, transact, and/or solicit business in California  
17 and in this judicial district, and/or derives substantial revenue from business  
18 transactions in California and in this judicial district, and/or otherwise avail  
19 themselves of the privileges and protections of the laws of the State of California such  
20 that this Court's assertion of jurisdiction over Defendants does not offend traditional  
21 notions of fair play and due process, and/or Defendants’ infringing actions caused  
22 injury to Plaintiff in California and in this judicial district such that Defendants should  
23 reasonably expect such actions to have consequences in California and in this judicial  
24 district.

25 4. Venue is proper, *inter alia*, pursuant to 28 U.S.C. § 1391(b)(2) because  
26 Defendants conduct, transact, and/or solicit business in this judicial district.

27 ///

28 ///

**PARTIES**

1  
2 5. Plaintiff MGA ENTERTAINMENT, INC. (“MGA”) is a California  
3 corporation having an address and principal place of business at 16380 Roscoe Blvd,  
4 Van Nuys, California, 91406.

5 6. Upon information and belief, Defendant LOUIS VUITTON  
6 MALLETIER, S.A. (“Louis Vuitton”), is a French société anonyme with a principal  
7 place of business at 2 rue du Pont-Neuf, Paris France F75001, and regular conducts,  
8 transacts, and/or solicits business in this judicial district.

9 7. Defendants DOES 1 through 10 are individuals and/or entities whose  
10 true names and capacities are presently unknown to Plaintiff. At such time as said  
11 Defendants’ true names and capacities become known to Plaintiff, Plaintiff will seek  
12 leave to amend this Complaint to insert said true names and capacities of such  
13 individuals and/or entities.

14 8. Upon information and belief, at all times relevant herein, Defendants,  
15 including Does 1 through 10, inclusive, and each of them, were and still are the partners,  
16 agents, employers, and/or employees of the other named Defendants, and each of them;  
17 that in so doing the things alleged, said Defendants were acting within the course  
18 and scope of said partnership, agency, or employment; and that in so doing the things  
19 alleged, said Defendants were acting at all times with the knowledge, consent, and  
20 authorization of each of the other Defendants.

21 9. Upon information and belief, at all times relevant herein, Defendants,  
22 including Does 1 through 10, inclusive, and each of them, are the alter egos of each  
23 other; are characterized by a unity of interest in ownership and control among  
24 themselves such that any individuality and separateness between them have  
25 ceased; are a mere shell instrumentality and conduit through which Defendants  
26 carried on their business by use of each other’s names; completely controlled,  
27 dominated, managed, and operated each other’s business to such an extent that any  
28 individuality or separateness of the Defendants does not and did not exist;

1 completely failed to observe any corporate formalities; and intermingled the assets of  
2 each other, and other entities affiliated with them, to suit the convenience of  
3 themselves and in order to evade legal obligations and liability.

4 **STATEMENT OF FACTS**

5 **MGA and Pooley Puitton**

6 10. MGA is a leading designer, developer, marketer, and distributor of  
7 innovative children's toys. MGA promotes and/or sells its products throughout the  
8 U.S. and the world through major retailers, quality toy stores, department stores, and  
9 online marketplaces.

10 11. MGA's products include L.O.L. Surprise!, which was awarded Top  
11 Selling Toy of the Year in the U.S. for 2017, and currently accounts for seven of the  
12 top 10 toys in the United States in 2018, according to N.P.D. Group, a retail tracking  
13 service; Bratz dolls, which at the height of their popularity outsold Mattel's Barbie  
14 dolls; and the Little Tikes Cozy Coupe, which was one of the first molded-plastic toy  
15 cars sold in the United States.

16 12. One of MGA's most successful new toys, launched in 2018, is the  
17 POOPSIE SLIME SURPRISE line of products ("Poopsie Products") directed towards  
18 children. Poopsie Products consist primarily of ingredients that consumers can  
19 combine to create "magical unicorn poop" slime that can then be stored in a portable  
20 container. The "surprise" element of the products is the somewhat randomized nature  
21 of the ingredients and the portable container.

22 13. Pooley Puitton is the name of a product (the "Pooley Name") used in  
23 association with one of the Poopsie Products, a handbag shaped toy container  
24 described on MGA's website as follows (the "Pooley Product"):

25 Make magical unicorn poop (slime) with Poopsie Slime  
26 Surprise! With a little unicorn magic and sparkle, you can  
27 customize unicorn poop and transform it multiple times! Poopsie  
28 Slime Surprise Pooley Puitton purse is the ultimate super slime

1 surprise with over 35+ magic surprises! Magically make scented,  
2 unicorn poop slime in a rainbow of colors! With a little unicorn  
3 magic, sparkle, and crunch, you can customize your unicorn  
4 poop again and again! When you gotta go, store the slime in the  
5 air-tight storage to keep the unicorn poop fresh! Includes:

- 6 • 1 Pooley Puitton purse
- 7 • 12 Unicorn Food packets (slime powder) - just add  
8 water to make a rainbow of poop!
- 9 • 6 Unicorn Magic packets, 4 Unicorn Sparkle  
10 packets, 2 Unicorn Crunch packets, 4 mystery  
11 scents, and 1 spoon.
- 12 • 1 exclusive bottle and 1 exclusive poop character  
13 keychain.
- 14 • Instructional booklet and tons of storage to take  
15 your poop on the go!

16 14. A picture of the outside of the Pooley Product, which most consumers  
17 will first encounter when shopping for the product in online or in-store mass retailer  
18 toy departments, is shown below:



1           15. A picture of the opened Poey Product, revealing its inner components,  
2 intended to hold the unicorn poop ingredients, mixing container, and storage cup, is  
3 shown below:



19                   **Defendant Louis Vuitton and its Action Against Poey Puitton**

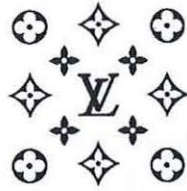
20           16. Louis Vuitton is a fashion designer of luxury luggage, leather goods,  
21 handbags, and accessories, which it markets and sells worldwide.

22           17. Upon information and belief, on or around December 7, 2018, Louis  
23 Vuitton claimed to one of MGA’s customers that the Poey Name and the Poey  
24 Product infringed upon or diluted one or more Louis Vuitton trademarks, including  
25 but not limited to the word mark LOUIS VUITTON (the “LV Word Mark”) and the  
26 following design mark (the “LV Design Mark”):

27 ///

28 ///





1  
2  
3  
4  
5  
6 18. Upon information and belief, Louis Vuitton owns federal registrations in  
7 the United States for the LV Word Mark and LV Design Mark bearing, respectively,  
8 United States Patent and Trademark Office (“USPTO”) Registration Nos. 1990760  
9 and 4192541.

10 19. MGA is further informed and believes, and upon such information and  
11 belief alleges, that Louis Vuitton claims trademark rights, and may own USPTO  
12 federal trademark registrations, in one or more of the design elements contained  
13 within the LV Design Mark (the “LV Design Elements”) (collectively, the LV Word  
14 Mark, LV Design Mark, and LV Design Elements are referred to herein as the “LV  
15 Marks”).

16 **There is No Likelihood of Confusion Between Poey Puitton and Louis Vuitton**

17 20. No reasonable consumer would mistake the Poey Product for a Louis  
18 Vuitton handbag. A side-by-side comparison of the Poey Product and, upon  
19 information and belief, the subject Louis Vuitton handbag is found below:



1           21. No reasonable consumer would mistake the Pooley Product as being  
2 intended to be used as a handbag. The Pooley Product is not intended to, nor could it  
3 reasonably be used to, serve the primary function of a handbag, which is to contain  
4 and transport everyday items such as a wallet, a makeup kit, or a hairbrush. The  
5 inside of the Pooley Product has multiple storage compartments that are designed  
6 solely for the contents contained therein or other similar Poopsie Products.

7           22. The Pooley Product is sold in the toy section of online and through mass  
8 market retailers for the suggested retail price of \$59.99.

9           23. The Pooley Product is primarily marketed to and intended for use by  
10 children.

11           24. The exterior of the Pooley Product is poop-shaped and made out of  
12 hardened plastic, the exterior of which depicts three-dimensional cartoonish facial  
13 features such as elongated eyelashes and pouted lips.

14           25. Upon information and belief, Louis Vuitton handbags are not poop-  
15 shaped, are not made out of hardened plastic, and do not depict three-dimensional  
16 cartoonish facial features such as elongated eyelashes and pouted lips.

17           26. Upon information and belief, Louis Vuitton handbags are not  
18 manufactured with the sole intention of storing ingredients and materials for the  
19 creation of slime or “magical unicorn poop.”

20           27. Upon information and belief, Louis Vuitton handbags are not sold in the  
21 toy section of mass market retailers, nor are they sold online or in-store through such  
22 mass market retailers.

23           28. Upon information and belief, Louis Vuitton handbags are not marketed  
24 at the suggested retail price of \$59.99.

25           29. Upon information and belief, Louis Vuitton handbags are not primarily  
26 marketed to or intended for use by children.

27           30. Upon information and belief, Louis Vuitton handbags are designed to  
28 primarily function as handbags, e.g. for the storage and transport of everyday items,



1 and reasonable consumers would understand that they are primarily designed for such  
2 use.

3 31. Upon information and belief, Louis Vuitton handbags are typically made  
4 out of high-end materials such as leather or crocodile skin.

5 32. Upon information and belief, Louis Vuitton handbags are sold by Louis  
6 Vuitton directly through its website, standalone boutiques, or leased spaces in high-  
7 end department stores, and are sold in the handbags, fashion, or accessory sections of  
8 such boutiques or department stores.

9 33. Upon information and belief, Louis Vuitton handbags are luxury items  
10 that typically retail from thousands to tens of thousands of dollars.

11 34. Upon information and belief, Louis Vuitton handbags are primarily  
12 marketed to and intended to be used by adults.

13 35. The Pooey Name and the Pooey Product, on the one hand, and the LV  
14 Marks and Louis Vuitton handbags, on the other hand, are not used for similar goods  
15 and services or in the same classes, but for different goods and services in different  
16 classes.

17 36. The Pooey Name and the Pooey Product, on the one hand, and the LV  
18 Marks and Louis Vuitton handbags, on the other hand, are not intended to serve  
19 similar functions or similar uses, but rather serve different functions and different  
20 uses.

21 37. The Pooey Name and the Pooey Product, on the one hand, and the LV  
22 Marks and Louis Vuitton handbags, on the other hand, are not manufactured using the  
23 same or similar materials, but rather are manufactured using material that is of  
24 obvious disparate quality.

25 38. The Pooey Name and the Pooey Product, on the one hand, and the LV  
26 Marks and Louis Vuitton handbags, on the other hand, are not marketed, sold, and  
27 distributed in similar streams of commerce, but rather are marketed, sold, and  
28 distributed through different channels of trade.

1           39. The Poey Name and the Poey Product, on the one hand, and the LV  
2 Marks and Louis Vuitton handbags, on the other hand, are not sold at similar price  
3 points; rather, Louis Vuitton handbags are luxury items typically sold at price points  
4 significantly higher than that of the Poey Product’s suggested retail price of \$59.99.

5           40. The Poey Name and the Poey Product, on the one hand, and the LV  
6 Marks and Louis Vuitton handbags, on the other hand, do not target similar  
7 consumers; rather, Louis Vuitton handbags are primarily directed towards and  
8 intended to be used by adults, while the Poey Product is primarily directed towards  
9 and intended to be used by children.

10           41. Based on the foregoing, there is no likelihood of confusion between the  
11 Poey Name and the Poey Product, on the one hand, and the LV Marks and Louis  
12 Vuitton handbags, on the other hand, or that Louis Vuitton sponsored or is associated  
13 with the Poey Name or the Poey Product.

14                           **Poey Puitton is Protected Fair Use and/or Parody**

15           42. Furthermore, The Poey Name and Poey Product are protected fair use  
16 and parody as set forth under 15 U.S.C. § 1125(c)(3)(A) and 15 U.S.C. §  
17 1125(c)(3)(A)(ii).

18           43. Louis Vuitton and the LV Marks are associated with expensive, high-  
19 end, luxury products that evoke wealth and celebrity, and that are typically worn by  
20 adults.

21           44. The Poey Name and Poey Product are designed to mock, criticize, and  
22 make fun of that wealth and celebrity and be used by a child. The use of the Poey  
23 Name and Poey Product in association with a product line of “magical unicorn  
24 poop” is intended to criticize or comment upon the rich and famous, the Louis  
25 Vuitton name, the LV marks, and on their conspicuous consumption.

26           45. The Poey Product is sold alongside similar parodies of other brands  
27 under the POOPSIE SLIME SURPRISE product line.

28           46. Neither the Poey Product itself, nor any of the element or characteristics

1 of the Poey Product, are used by MGA as a source identifier. Furthermore, the  
2 Poey Product contains several distinguishing design elements that, upon information  
3 and belief, are not claimed by Louis Vuitton as a trademark, including question marks  
4 and swirls of poop.

5 47. The Poey Name and Poey Product convey just enough of the original  
6 LV Marks to allow consumers to appreciate the parody without appropriating the  
7 entire marks. The differences are sufficiently obvious and the parody sufficiently  
8 blatant such that no reasonable consumer encountering the Poey Name or Poey  
9 Product would mistake its source or sponsorship as being Louis Vuitton.

10 **Louis Vuitton's History of Vexatious Litigation Against Protected Parody**

11 48. Louis Vuitton has a history of not respecting parody rights in the United  
12 States and filing vexatious lawsuits against such protected parody.

13 49. Such cases include *Louis Vuitton Malletier S.A. v. Haute Diggity Dog*,  
14 507 F.3d 252 (4<sup>th</sup> Cir., 2007) and *Louis Vuitton Malletier, S.A. v. My Other Bag, Inc.*,  
15 156 F. Supp. 3d 425 (S.D.N.Y. 2016), *aff'd*, 674 F. App'x 16 (2d Cir. 2016), *cert.*  
16 *denied*, 138 S. Ct. 221 (2017), both of which it ultimately lost and which decisions  
17 were upheld on appeal.

18 50. Other instances of Louis Vuitton's vexatious litigation include losing a  
19 lawsuit in a Dutch court against artist Nadia Plesner for her *Darfurnica* painting and  
20 *Simple Living* t-shirts which parodied Louis Vuitton and were intended to raise  
21 awareness of and money for the conflict in Darfur, and threatening to sue the  
22 University of Pennsylvania for parodying Louis Vuitton's trademark in a poster  
23 advertising a symposium on trademark law.

24 51. Louis Vuitton's claims of infringement have affected MGA's rights in  
25 POOPSIE SLIME SURPRISE, the Poey Name and Poey Product vis-à-vis its  
26 domestic and foreign customers, and specifically in California, and therefore affects  
27 the interstate and foreign commerce of the United States.

28 ///

**FIRST CAUSE OF ACTION**

**Declaratory Judgment**

**(28 U.S.C. § 2201(a) and 2202)**

1  
2  
3  
4 52. Plaintiff repleads and incorporates by reference each and every allegation  
5 set forth in the preceding paragraphs as if fully set forth herein.

6 53. Louis Vuitton is the purported owner of the LV Marks.

7 54. Louis Vuitton has claimed that the Poey Name and Poey Product  
8 infringe upon or dilute LV's purported rights in the LV Marks.

9 55. MGA denies that the Poey Name or the Poey Product infringe upon or  
10 dilute the LV Marks.

11 56. MGA further claims that the Poey Name and the Poey Product are  
12 protected fair use under 15 U.S.C. § 1125(c)(3)(A), and/or are protected parody under  
13 15 U.S.C. § 1125(c)(3)(A)(ii).

14 57. An actual, present, and judicable controversy has arisen between  
15 Plaintiff and Defendants concerning their respective rights.

16 58. Louis Vuitton's claims of infringement or dilution have affected MGA's  
17 rights in POOPSIE SLIME SURPRISE, the Poey Name and the Poey Product vis-  
18 à-vis its domestic and foreign customers, and therefore affects the interstate and  
19 foreign commerce of the United States.

20 59. Furthermore, upon information and belief, Louis Vuitton intends to make  
21 similar claims against MGA in the United States based upon its LV Marks.

22 60. MGA seeks a declaration of its rights pursuant to 28 U.S.C. §§ 2201(a)  
23 and 2202 that the Poey Name and Poey Product are non-infringing of the LV  
24 Marks, do not dilute the LV Marks, are protected fair use under 15 U.S.C. §  
25 1125(c)(3)(A), and/or are protected parody under 15 U.S.C. § 1125(c)(3)(A)(ii).

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PRAYER FOR RELIEF**

**WHEREFORE**, MGA prays for judgment as follows:

- A. Pursuant to 28 U.S.C. §§ 2201(a) and 2202, a declaration that MGA’s use of the Poey Name and Poey Product do not infringe or dilute Louis Vuitton’s purported rights in the LV Marks, and do not cause a likelihood that consumers will be confused as to the source or sponsorship of MGA’s Poey Name and Poey Product;
- B. Pursuant to 28 U.S.C. §§ 2201(a) and 2202, a declaration that MGA’s use of the Poey Name and Poey Product are protected fair use under 15 U.S.C. § 1125(c)(3)(A);
- C. Pursuant to 28 U.S.C. §§ 2201(a) and 2202, a declaration that MGA’s use of the Poey Name and Poey Product are protected parody under 15 U.S.C. § 1125(c)(3)(A)(ii);
- D. Pursuant to 28 U.S.C. §§ 2201(a) and 2202, a declaration that MGA may continue to market and distribute its Poey Product, and may continue to use the Poey Name in association with the Poey Product;
- E. For MGA’s reasonable attorneys’ fees;
- F. For all costs of suit; and
- G. For such other and further relief as the Court may deem necessary and proper.

DATED: December 28, 2018

MGA ENTERTAINMENT, INC.

By: /s/ Benjamin C. Johnson  
BENJAMIN C. JOHNSON  
JOSEPH A. LOPEZ  
Attorney for Plaintiff  
MGA Entertainment, Inc.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable.

DATED: December 28, 2018                      MGA ENTERTAINMENT, INC.

By: /s/ Benjamin C. Johnson  
BENJAMIN C. JOHNSON  
JOSEPH A. LOPEZ  
Attorney for Plaintiff  
MGA Entertainment, Inc.