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14 Attorneys for Plaintiff CrossFit, Inc.

15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA
17

18 CROSSFIT, INC., a Delaware
19 corporation,
20 Plaintiff,
21 v.
22 NATIONAL STRENGTH AND
CONDITIONING ASSOCIATION, a
23 Colorado corporation,
24 Defendant.
25
26
27
28

CASE NO. '14CV1191 JLS KSC

COMPLAINT FOR:

**(1) FALSE ADVERTISING
(Lanham Act - 15 U.S.C.
§ 1125(a));**

**(2) FALSE ADVERTISING
(Cal. Bus. Prof. Code § 17500);**

**(3) UNFAIR COMPETITION
(Cal. Bus. & Prof. Code § 17200);
and**

(4) DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

PRELIMINARY STATEMENT

1
2 1. This case is about a supposedly “scientific” study that
3 Defendant National Strength and Conditioning Association (the “NSCA”)
4 published to attack one of its competitors, CrossFit, Inc. (“CrossFit”). The study is
5 based on data that is objectively false. Specifically, it reports that 9 of the 54
6 participants in the study dropped out of the CrossFit program being evaluated due
7 to “injury or overuse.” That simply is not true. The NSCA nonetheless published
8 the study and used the falsified rate of injury to attack its competitor, CrossFit, in
9 the marketplace. CrossFit has made the NSCA well aware of the fact that the
10 study’s data was falsified, but the NSCA has nonetheless refused to take any
11 corrective action. This case seeks to remedy the harm caused by the NSCA’s
12 unlawful, unfair, and unethical conduct.

13 2. The NSCA and CrossFit are competitors in the fitness industry.
14 In the past half-century, little has changed in most American gyms. The staples of
15 today’s gyms – things like weight machines, treadmills, and exercise bicycles – are
16 basically the same types of equipment that were used decades ago. The NSCA
17 and its long-time peer, the American College of Sports Medicine (the “ACSM”),
18 are two pillars of this traditional fitness establishment. For decades, the NSCA and
19 ACSM have taught the same stagnant brand of fitness and have built a lucrative
20 apparatus around it. They are among the largest certifiers of personal trainers and
21 strength and conditioning professionals (collectively, “trainers”) in the country,
22 and they also offer seminars, study guides, and tests that are used throughout the
23 industry. They also publish supposedly scholarly journals that perpetuate their
24 fitness model. In short, the NSCA and ACSM are largely responsible for
25 maintaining the status quo in the massive fitness industry, and they have a vested
26 interest in doing so: they obtain significant revenues charging for the certifications
27 and training services based on it.

28

1 3. Plaintiff CrossFit is a relatively new player in the fitness space.
2 CrossFit has experienced a meteoric rise from a single affiliate gym in 2000 to
3 approximately 10,000 affiliate gyms today, with 80,000 certified CrossFit trainers
4 teaching CrossFit to more than a million participants. The CrossFit regimen is a
5 radically different approach to the brand of fitness training fostered by NSCA and
6 ACSM. CrossFit involves constantly varied functional movements performed at a
7 relatively high intensity, with an emphasis on aerobic exercises, gymnastic
8 movements, and Olympic weight lifting. Whereas the NSCA's and ACSM's
9 decades-long stranglehold on fitness has resulted in a country that is generally
10 considered to be out of shape – if not downright obese – CrossFit has gained a
11 massive following in recent years precisely because it achieves better and faster
12 results than traditional forms of fitness training. In short, it succeeds where the
13 traditional fitness establishment has failed.

14 4. Like the NSCA and ACSM, CrossFit makes a significant portion of its
15 revenue through the certification of CrossFit trainers. CrossFit, Inc. offers its
16 initial Level I Trainer's course, as well as both advanced and specialty courses.
17 CrossFit's ascendance therefore threatens the revenue stream of the traditional
18 fitness providers. The NSCA and ACSM could use this competition as an
19 opportunity to rise to the occasion, and either (a) prove that their fitness model
20 yields better results than CrossFit (which it does not), or (b) revise their model to
21 make it better. They have done neither, and instead have opted for the well-worn
22 strategy that "the best defense is a good offense." Through its supposedly "peer
23 reviewed" journal – the Journal of Strength and Conditioning Research ("JSCR") –
24 the NSCA has published falsified data suggesting that CrossFit causes injuries at a
25 high rate. It has done so in an effort to portray CrossFit as "dangerous," and
26 therefore a fitness program that should be avoided.

27 5. There has not been a single study based on scientifically valid
28 principles demonstrating that CrossFit poses a greater injury risk than any other

1 form of rigorous exercise. In November 2013, the JSCR published a study by
2 Steven T. Devor (an ACSM “fellow”), Michael M. Smith, Allan J. Sommer, and
3 Brooke E. Starkoff, entitled “Crossfit-based [sic] high intensity power training
4 improves maximal aerobic fitness and body composition” (the “Devor Study”).
5 The Devor Study purported to track a ten-week CrossFit program. While the
6 Devor Study correctly found that CrossFit improved the athletes’ fitness levels, it
7 also reported that nine of fifty-four participants (16% of the sample population)
8 dropped out of the program due to “overuse or injury.” That assertion was based
9 on false data.

10 6. The report of a 16% “overuse or injury” rate is at best the result of
11 sloppy and scientifically unreliable work, and at worst a complete fabrication. It
12 simply is not true that nine participants sustained injuries that prevented them from
13 completing the study. In fact, CrossFit has spoken to a majority of those who did
14 not complete the study; those participants denied reporting that they failed to finish
15 because of injuries. Indeed, those participants asserted that they had not been in
16 contact with Mr. Devor and his team at all regarding their reasons for not
17 completing the study, or regarding injuries in general.

18 7. The purported “overuse or injury” data published in the JSCR was
19 contrived to dissuade people from pursuing CrossFit as a form of exercise, and
20 relatedly to dissuade trainers from seeking CrossFit certification instead of NSCA
21 and ACSM certifications. CrossFit discussed the unreliability of the data with the
22 Devor Study’s authors, and made it known to the NSCA, but the NSCA chose not
23 to correct the publication. Instead, the NSCA continues to disseminate inaccurate
24 information about CrossFit throughout the fitness industry.

25 8. CrossFit is eager to compete with the NSCA, ACSM, and other
26 traditional fitness providers in the market. It is confident that the merits of the
27 CrossFit model will prevail. CrossFit only demands that there be a level playing
28 field based on the merits of the fitness program, not false data and junk “science”

1 intended to scare participants away from CrossFit. The Devor Study is just one
2 egregious example of the NSCA's campaign of using false advertising and unfair
3 competition to attack CrossFit's business model. CrossFit brings this action to put
4 a stop to the NSCA's unlawful conduct.

5 **PARTIES**

6 9. Plaintiff CrossFit is a Delaware corporation, with its principal place of
7 business at 444 S. Cedros Avenue, Solana Beach, California.

8 10. The NSCA is a Colorado corporation, with its principal place of
9 business at 1885 Bob Johnson Dr., Colorado Springs, Colorado.

10 **JURISDICTION AND VENUE**

11 11. This is a civil action for false advertising under the Lanham Act (15
12 U.S.C. § 1125(a)); false advertising under California Business and Professions
13 Code Section 17500; unfair competition under California Business and Professions
14 Code Section 17200; and declaratory judgment.

15 12. This Court has subject matter jurisdiction over CrossFit's claims for
16 violation of the Lanham Act pursuant to 15 U.S.C. § 1125; and 28 U.S.C. §§ 1331
17 and 1338(a). This Court has original and/or supplemental jurisdiction over
18 CrossFit's state law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367(a), because
19 the state law claims for false advertising and unfair competition are joined with
20 substantial and related claims under the federal false advertising and unfair
21 competition law. This Court also has diversity jurisdiction over this action,
22 pursuant to 28 U.S.C. § 1332(a)(2), because the matter in controversy exceeds the
23 sum or value of \$75,000 exclusive of interest or costs, and is between citizens of
24 different states.

25 13. Personal jurisdiction over the NSCA is proper because it advertises
26 and sells products and services to customers and prospective customers in
27 California and in this District.

28

1 14. Venue is proper in this District and before this Court pursuant to 28
2 U.S.C. § 1391(b).

3 **GENERAL ALLEGATIONS**

4 **A. The NSCA's Lucrative Personal Training Certification Business**

5 15. The NSCA is a fitness organization that was founded in 1978. It
6 promulgates standards for physical training. For the past several decades, the
7 NSCA, ACSM, and American Council on Exercise have been the three leading
8 players in the physical training industry. Their physical training standards are
9 widely used throughout the fitness industry.

10 16. Today the NSCA consists of nearly 30,000 members and touts itself
11 as the “leader in research and education of strength and conditioning
12 professionals.” According to the NSCA’s website, its members consist of
13 “thousands” of NSCA-certified trainers. It is one of the largest certifiers of trainers
14 in the country.

15 17. On information and belief, a large portion of the NSCA’s revenue is
16 attributable to the certification of trainers, and accompanying renewal and
17 continuing education requirements for its trainers.

18 18. The NSCA offers exams for four types of trainer certifications:
19 Certified Strength and Conditioning Specialist, Certified Special Population
20 Specialist, NSCA-Certified Personal Trainer, and Tactical Strength and
21 Conditioning Facilitator. The fees for such exams range from \$250 to \$450. The
22 NSCA also sells a variety of examination preparation materials.

23 19. Once certified, NSCA-certified trainers are required to pay to renew
24 their certifications every two years. The NSCA also has continuing education
25 requirements, which vary based on a trainer’s level of certification. These
26 continuing education requirements can be met through NSCA-approved continuing
27 education programs, such as seminars and videos. The NSCA receives revenue in
28 the form of fees paid by trainers for continuing education programs.

1 20. According to the ACSM’s website, it has “more than 45,000 members
2 and certified professionals worldwide.” Like the NSCA, it provides trainer
3 certifications. On information and belief, a large portion of the ACSM’s revenue is
4 attributable to the certification of trainers, and accompanying renewal and
5 continuing education requirements for its trainers

6 21. Although the NSCA and ACSM are technically competitors in the
7 trainer certification industry, they promote similar fitness products and have
8 similar business models. Their certifications are viewed as nearly interchangeable
9 in the fitness industry. Like the NSCA, the ACSM derives revenue from trainer
10 certification programs, exam preparation materials, and continuing education
11 requirements. The NSCA and ACSM work closely together and, in fact, the
12 ACSM even allows its members to use NSCA courses to fulfill ACSM continuing
13 education requirements.

14 22. In addition to its trainer certification business, the NSCA also
15 publishes supposedly scholarly work regarding health and fitness in support of the
16 NSCA’s traditional fitness model. The NSCA publishes at least six journals.
17 According to the NSCA’s website, the JSCR is “the official research journal of the
18 National Strength and Conditioning Association.” It purports to publish “monthly
19 issues containing peer-reviewed, evidenced based findings intended to increase
20 your professional knowledge”

21 23. The NSCA’s website indicates that the “goal” of its journals,
22 including the JSCR, is to “provide you with a valuable balance of the newest
23 findings in strength and conditioning research and its practical application.” It
24 advertises its allegedly peer-reviewed journals, of which the JSCR is its most
25 notable, as “some of the most sought after in the industry” and as “top resources
26 for your continuing education and professional development.”

27 24. Upon information and belief, the NSCA coordinates the supposed
28 peer-review process for articles published in the JSCR.

1 25. The JSCR is published in print format, online format, and as
2 applications for tablets and mobile devices. Issues of the JSCR are available to
3 NSCA members and for purchase.

4 26. The JSCR has a large readership and the articles published therein are
5 frequently cited by fitness professionals, authors, commentators, and members of
6 the media. The NSCA uses the JSCR to further the NSCA's brand of fitness and
7 recognition in the fitness industry.

8 **B. CrossFit's Competing Trainer Certification Business**

9 27. CrossFit, Inc. is a fitness company whose training methodology
10 differs from that of the NSCA and ACSM. Its trainer certification program also
11 competes with that of the NSCA and ACSM.

12 28. CrossFit aims to improve muscular strength, endurance, flexibility,
13 and the other generally recognized components of fitness through a perpetually
14 changing, rigorous mix of functional movements that include gymnastics and
15 bodyweight based movements, Olympic weight lifting, and single-modality
16 aerobic activities (such as running, rowing, or even swimming). CrossFit mixes
17 these exercises together in workouts that may be for time, for load, or in rounds.

18 29. Due to its (a) high-intensity exercise style, (b) focus on practical
19 physical training, and (c) constantly varying mix of exercises, CrossFit is highly
20 effective and has quickly earned a massive following (particularly among current
21 and former members of the military).

22 30. CrossFit's novel approach to fitness is a threat to the NSCA's and
23 ACSM's business models. In just over a decade, CrossFit has grown to include
24 nearly 10,000 licensed affiliate gyms (referred to as "boxes"), including
25 approximately 300 military and law-enforcement affiliate boxes. CrossFit
26 continues to expand rapidly, presently with approximately 80,000 certified trainers,
27 and a million or more participants around the world.

28

1 31. CrossFit’s profitability is due to two core revenue streams: (i) the
2 certification of trainers through its seminar program, which provides American
3 National Standards Institute (ANSI) accredited certificate courses; and (ii)
4 licensing the CrossFit name to affiliate boxes, which are run by licensed Level I
5 trainers in good standing, many of whom also employ additional Level I trainers.

6 32. A large portion of CrossFit’s popularity is due to the low costs of
7 operating affiliate boxes. CrossFit licenses the CrossFit name to its affiliate boxes
8 for an annual, renewable fee of no more than \$3,000. Unlike most fitness
9 organizations, CrossFit’s boxes require few expensive pieces of gym equipment.
10 CrossFit’s low licensing fees contribute to its impressive growth.

11 33. All CrossFit affiliate boxes are operated by individuals that have
12 completed at least the CrossFit Level 1 Trainer Course. This course is offered by
13 CrossFit to first-time trainers for a fee of approximately \$1,000. This certification
14 is valid for five years, at which time the trainer must recomplete and pass the Level
15 1 Trainer Course and accompanying written test.

16 **C. The NSCA, Through the JSCR, Publishes False CrossFit Injury Data**

17 34. The JSCR’s website identifies JSCR as “The Official Research
18 Journal of the National Strength and Conditioning Association.”

19 35. The JSCR’s Editor-in-Chief is Dr. William J. Kraemer. Dr. Kraemer
20 is also a fellow with the ACSM.

21 36. In its November 2013 issue, the JSCR published the Devor Study,
22 which was co-authored by another ACSM fellow, Dr. Devor.

23 37. The NSCA purports to hold the copyright in the Devor Study.

24 38. In the Devor Study, Dr. Devor and his fellow researchers purport to
25 examine the effects of “Crossfit-based high-intensity power training” (which the
26 article refers to by the acronym “HIPT”) on aerobic fitness and body composition.

27 39. The study states that it tracked fifty-four individuals during ten weeks
28 of CrossFit training at a CrossFit affiliate in Columbus, Ohio. According to the

1 study, all training performed during the study was done “under the supervision of a
2 fellow of the American College of Sports Medicine (ACSM) and an ACSM
3 certified registered clinical exercise physiologist.”

4 40. No ACSM fellow was present at any point during the training
5 program. Instead, an existing CrossFit affiliate, running an annual “challenge” for
6 its members agreed to allow the members to be tested before the challenge and
7 tested again at the end of the 10-week challenge.

8 41. The Devor Study notes that following ten weeks of CrossFit,
9 participants’ “body fat percentage dropped by 3.7% across all individuals, in
10 absolute terms.” This data supports what the one million or more CrossFit
11 participants already know: CrossFit works. The Devor Study unsurprisingly
12 concludes that “a 10-week crossfit-based [sic] HIPT program significantly
13 improves the maximal aerobic capacity and body composition in individuals of all
14 fitness levels and genders.”

15 42. But the Devor Study does not stop there. It instead goes on to address
16 a topic that is found nowhere in the abstract and that is different from the supposed
17 focus of the study. The Devor Study finds a 16% “overuse or injury” rate among
18 participants, which the study says “may call into question the risk-benefit ratio for
19 such extreme training.” The Devor Study, on that basis, opines that CrossFit “may
20 not be worth the risk of injury and lost training time.”

21 43. In support of the 16% “overuse or injury” rate, the Devor Study
22 represents that eleven subjects “dropped out of the training program” and that nine
23 of them cited “overuse or injury for failing to complete the program and finish
24 follow up testing.” The Devor Study declines to define what “overuse” means or
25 to specify what injuries those individuals supposedly suffered.

26 44. The allegation that nine subjects cited “overuse or injury” was
27 unfounded and plainly intended to discredit CrossFit by painting it as unsafe due to
28 injury risk.

1 45. The “overuse or injury” statistics in the Devor Study were fabricated.
2 No member who tested in at the beginning of the ten week challenge ever cited
3 “overuse or injury for failing to complete the program and finish follow up
4 testing.” The authors of the Devor Study knew this because neither they nor
5 anyone else involved in running the study ever spoke to those nine participants that
6 the study reports dropped out due to “overuse or injury” about why they failed to
7 test out at the end of the program.

8 46. The Devor Study’s authors did not – and could not –ask the
9 participants why they failed to return because the Devor Study was a blind study in
10 which the subjects were identified only by a number. The researchers did not
11 know the true identities of the participants, and the 11 participants simply failed to
12 return without providing notice. Therefore, when the participants did not return,
13 the testers could not have contacted them. There is no basis for the “overuse or
14 injury” statistic.

15 47. As detailed in Section D below, CrossFit has identified the individuals
16 who dropped out of the study and confirmed that they did not do so because of
17 “overuse or injury.”

18 48. Moreover, the Devor Study states that “there are emerging reports of
19 increased rates of musculoskeletal and metabolic injury” in CrossFit and other
20 rigorous workout regimens. In support of that claim, it purports to rely on a 2011
21 article co-authored by Dr. Kraemer (ACSM Fellow and JSCR Editor-in-Chief) and
22 co-published by the ACSM: “Consortium for Health and Military Performance and
23 American College of Sports Medicine Consensus Paper on Extreme Conditioning
24 Programs in Military Personnel” (the “CHAMP/ACSM Paper”). The
25 CHAMP/ACSM Paper purported to examine several rigorous exercise programs,
26 including CrossFit, speculating that they “could arguably lead to undue overload,
27 poor body control, and loss of safe exercise performance, which, alone or in
28 combination, might notably exacerbate and augment musculoskeletal injury risk.”

1 The CHAMP/ACSM Paper, however, did not involve any data gathering or
2 scientific testing to support this hypothesis, which is why its findings were only
3 phrased as what types of injuries “could arguably” be attributed to exercise
4 programs such as CrossFit. Therefore, the Devor Study’s claim that “there are
5 emerging reports of increased rates of musculoskeletal and metabolic injury” in
6 CrossFit is unsupported and false.

7 **D. CrossFit Has Confirmed the Falsity of the Devor Study’s Data, but its**
8 **Authors Refuse to Correct Their Data or Even Explain It**

9 49. Suspicious of the surprisingly high “overuse or injury” rate, both
10 CrossFit and the Columbus, Ohio affiliate attempted to verify why the 9
11 participants actually dropped out of the Devor Study. The owner of the CrossFit
12 affiliate where the study was conducted knew the identity of the participants in the
13 study and reported to CrossFit that he verified that they did not drop out because of
14 “overuse or injury.” A CrossFit representative contacted a sample of those who
15 dropped out to confirm that they dropped out because of a lack of time and/or
16 interest in completing the study, not injury. Each denied even speaking to the
17 authors of the Devor Study about his/her reasons for not returning to complete the
18 study. They categorically denied having sustained injuries, or having informed the
19 researchers that they suffered injuries due to CrossFit. Moreover, the study
20 coordinator, who knew the identity of the study participants – including those who
21 dropped out – also confirmed that the dropouts were not because of overuse or
22 injury.

23 50. Dr. Devor was made aware of the discrepancy between the “overuse
24 or injury” findings in the Devor Study and the responses of the participants to
25 inquiries by the CrossFit affiliate owner and CrossFit’s own representative. In an
26 April 23, 2013 telephone conversation with Russell Berger of CrossFit, Dr. Devor
27 admitted that his team conducted a “blind study” and, therefore, did not know the
28 identity of the nine participants who did not return. In fact, Dr. Devor stated that

1 he did not collect any of the data at all. He said the data was collected by Dr.
2 Smith. Confronted on the April 23, 2013 call with the obvious conflict between
3 the Devor Study's findings and the lack of available data, Dr. Devor agreed to
4 contact Dr. Smith and that then one or both of them would contact Mr. Berger to
5 further discuss the Devor Study's data collection and findings.

6 51. Rather than explain or retract their findings, on April 25, 2013, Dr.
7 Devor sent an email to Mr. Berger, indicating that Dr. Devor had spoken with Dr.
8 Smith, and that the two of them would not provide any further comment or
9 explanation regarding the Devor Study.

10 52. CrossFit has attempted to refute the false data in the Devor Study. It
11 has published an article challenging the data in the Devor Study, including a
12 transcript of Mr. Berger's call with Dr. Devor, and otherwise tried to address the
13 study and the bad press that has surrounded its publication. Nonetheless, the
14 NSCA has failed to retract the false Devor Study.

15 **E. The NSCA Continues to Attack CrossFit's Alleged Injury Risk Despite**
16 **the Absence of Any Scientific Support**

17 53. The NSCA has used the JSCR's wide distribution among fitness
18 professionals and credibility in the fitness industry to disseminate the Devor Study,
19 which contains false and fraudulent injury data about CrossFit. It has done so for
20 the benefit of the NSCA, which competes with CrossFit in the fitness and training
21 certification industries.

22 54. The NSCA lacks actual data demonstrating that CrossFit is riskier
23 than other similar forms of exercise. However, the NSCA, through the JSCR, has
24 only further increased its efforts to discredit CrossFit by continuing to characterize
25 CrossFit as carrying a heightened risk of injury.

26 55. For example, on November 22, 2013, the JSCR, the NSCA's official
27 journal, posted in the "Published-Ahead-of-Print" section of its website yet another
28 study portraying CrossFit as dangerous, entitled "The nature and prevalence of

1 injury during CrossFit training,” authored by Paul Taro Hak, Emil Hodzovic, and
2 Ben Hickey (the “Hak Study”). According to the JSCR’s website, “Articles
3 appearing in this Published Ahead-of-Print section have been peer-reviewed and
4 accepted for publication in this journal and posted online before print publication.”

5 56. The Hak Study attempted to quantify the injury rate for CrossFit
6 participants through data collection methods that do not adhere to scientifically
7 valid principles, especially for a supposedly peer-reviewed journal. The Hak Study
8 relies solely on an a *self-selected* population of people from ten CrossFit *online*
9 *forums* who filled out *anonymous online questionnaires* in which they *self-*
10 *reported* injuries that they supposedly suffered over a *multi-year period*, without
11 *any verification* by the authors as to (a) the causes of those injuries, (b) whether
12 those injuries were even suffered, or (c) whether those participants had in fact done
13 CrossFit at all. The study featured an eye-popping allegation that 73.5% of
14 CrossFit participants suffered injury, only to subsequently concede that this
15 translated to only 3.1 alleged injuries per 1,000 hours trained, which is similar to
16 the injury rates for “general gym/fitness club training; and long, middle and sprint
17 distance running.”

18 57. On information and belief, the Hak Study was published by the NSCA
19 to further paint CrossFit as dangerous.

20 **F. The False Data Published by the NSCA has Caused Harm to CrossFit**

21 58. The NSCA has, through use of the JSCR, intentionally painted
22 CrossFit as dangerous based on these false and unscientific studies. That has
23 caused substantial harm to CrossFit.

24 59. The false and fraudulent data published in the Devor Study has been
25 re-published and cited many times over, including in reputable fitness publications.

26 60. For example, on November 4, 2013, Outside Magazine published an
27 article entitled, *Is CrossFit Killing Us?: The CrossFit backlash is in full swing –*
28 *led by a long list of injured participants*. The article features the Devor Study,

1 explaining that it “revealed a troubling statistic: 16 percent of the 54 participants
2 had quit the program due to ‘overuse or injury.’” That, of course, was based on the
3 demonstrably false and unsupported statements described above.

4 61. By way of further example, on November 4, 2013, four publications –
5 the Air Force Times, Army Times, Marine Corps Times, and Navy Times –
6 published an article entitled “Reality check: Fitness fads.” The article explains that
7 the Devor Study “fueled criticism of CrossFit by reporting that nine subjects - or
8 16 percent of those who started - dropped out of the study because of injuries or
9 overuse issues.”

10 62. By way of further example, on December 5, 2013, WorldLifestyle
11 published an article entitled *CrossFit: Dysfunctional Fitness* that, relying on the
12 Devor Study, writes “CrossFit promotes functional fitness, but its high-intensity
13 workouts leave some people unable to function at all.”

14 63. The dissemination by the NSCA of the false and fraudulent injury
15 data in the Devor Study has caused substantial reputational and economic damage
16 to CrossFit.

17 **FIRST CLAIM FOR RELIEF**

18 **FALSE ADVERTISING**

19 **(Lanham Act 15 U.S.C. § 1125(a))**

20 64. CrossFit realleges and incorporates by reference the allegations in
21 paragraphs 1 through 63, as if set forth fully herein.

22 65. CrossFit is in the businesses of licensing its name to affiliates and
23 certifying the trainers of such affiliates. Because CrossFit provides its licenses and
24 certifications in interstate commerce, and because the false advertising at issue has
25 been disseminated throughout interstate commerce (e.g., via the internet). CrossFit
26 is entitled to protection under the Lanham Act.

27 66. Defendant NSCA is a company that certifies trainers, throughout the
28 United States and globally.

1 67. The NSCA, operating through its journal, the JSCR, published and
2 distributed the Devor Study to numerous customers, trainers, and potential
3 customers and trainers of CrossFit.

4 68. The Devor Study contained numerous false, misleading, and/or
5 deceptive statements regarding CrossFit's injury rates.

6 69. The Devor Study contains statements that are literally false and
7 misleading, and/or false and misleading by implication, and also deceived, and/or
8 has a tendency to deceive, a substantial segment of the JSCR's target audience:
9 customers, trainers, and other fitness professionals. Those statements include the
10 following statements:

- 11 • “nine subjects (16% of total recruited subjects) cit[ed] overuse
12 or injury for failing to complete the [CrossFit] program and
13 finish follow up testing”; and
- 14 • “there are emerging reports of increased rates of
15 musculoskeletal and metabolic injury in these programs
16 [including CrossFit].”

17 70. The NSCA intended the publication of false injury data and other
18 false, misleading, and/or deceptive statements to influence the purchasing
19 decisions of CrossFit's customers, trainers, and/or potential customers and trainers.

20 71. By distributing and making available the Devor Study and its false
21 injury data, and by making other statements, the NSCA has caused numerous false,
22 misleading, and/or deceptive statements of fact to enter interstate commerce.

23 72. The Devor Study and its faulty injury data and any other false,
24 misleading, and/or deceptive statements by the NSCA already have diverted,
25 and/or are likely to divert, potential certification sales from CrossFit. Moreover,
26 the NSCA's false, misleading, and/or deceptive statements of fact regarding
27 CrossFit's injury rate have lessened, and/or are likely to lessen, the goodwill
28 previously associated with CrossFit in general. Therefore, CrossFit has suffered,

1 and will continue to suffer, injury and irreparable harm as a result of the NSCA's
2 conduct.

3 73. CrossFit is entitled to recover damages along with the NSCA's profits
4 and reasonable royalties, each of which may be trebled pursuant to Section 35(a) of
5 the Lanham Act, 15 U.S.C. § 1117(a).

6 74. The NSCA's willful conduct renders this case an exceptional case
7 pursuant to 15 U.S.C. § 1117(a) such that CrossFit is entitled to reasonable
8 attorneys' fees.

9 75. The NSCA's acts of false advertising and misrepresentation have
10 caused and, if not preliminarily and permanently enjoined, will continue to cause,
11 CrossFit to suffer irreparable harm.

12 **SECOND CLAIM FOR RELIEF**

13 **FALSE ADVERTISING**

14 **(Cal. Bus. & Prof. Code § 17500)**

15 76. CrossFit realleges and incorporates by reference the allegations in
16 paragraphs 1 through 75, as if set forth fully herein.

17 77. The NSCA, through its journal, the JSCR, published and distributed
18 the Devor Study and made other false, misleading, and deceptive statements to
19 numerous consumers and potential consumers of CrossFit, in order to dissuade
20 customers and trainers from using CrossFit's services instead of the NSCA's
21 competing services.

22 78. The NSCA has made false, misleading, and/or deceptive statements,
23 assertions, and conclusions about CrossFit's injury rates. The NSCA's statements
24 are literally false and misleading and/or false and misleading by implication, and
25 also have deceived, and/or have a tendency to deceive, a substantial segment of its
26 target audience – fitness customers, trainers, and other fitness professionals. Those
27 statements include:

- 28
- “nine subjects (16% of total recruited subjects) cit[ed] overuse

1 or injury for failing to complete the [CrossFit] program and
2 finish follow up testing”; and

- 3 • “there are emerging reports of increased rates of
4 musculoskeletal and metabolic injury in these programs
5 [including CrossFit].”

6 79. The NSCA knew, or through the exercise of reasonable care
7 should have known, that its statements were false, misleading, and/or deceptive.

8 80. The Devor Study and its faulty injury data, and any other false,
9 misleading, and/or deceptive statements by the NSCA, already have diverted,
10 and/or are likely to divert, potential certification sales from CrossFit. Moreover,
11 the NSCA’s false, misleading, and/or deceptive statements of fact regarding
12 CrossFit’s injury rate has lessened, and/or is likely to lessen, the goodwill
13 previously associated with CrossFit in general. Therefore, CrossFit has suffered,
14 and will continue to suffer, injury and irreparable harm as a result of the NSCA’s
15 conduct.

16 81. The NSCA’s acts of false advertising and misrepresentation have
17 caused and, if not preliminarily and permanently enjoined, will continue to cause,
18 CrossFit to suffer irreparable harm.

19 **THIRD CLAIM FOR RELIEF**

20 **UNFAIR COMPETITION**

21 **(Cal. Bus. & Prof. Code § 17200)**

22 82. CrossFit realleges and incorporates by reference the allegations in
23 paragraphs 1 through 81, as if set forth fully herein.

24 83. The NSCA, through its journal the JSCR, published and distributed
25 the Devor Study and made other false, misleading, and deceptive statements to
26 numerous consumers and potential consumers of CrossFit in order to dissuade
27 customers from using CrossFit’s services instead of the NSCA’s competing
28 services. Those statements include:

- 1 • “nine subjects (16% of total recruited subjects) cit[ed] overuse
- 2 or injury for failing to complete the [CrossFit] program and
- 3 finish follow up testing”; and
- 4 • “there are emerging reports of increased rates of
- 5 musculoskeletal and metabolic injury in these programs
- 6 [including CrossFit].”

7 84. The NSCA’s publication and distribution of the Devor Study and
8 other false, misleading and deceptive statements, assertions and conclusions, have
9 impaired, and will continue to impair, CrossFit’s goodwill. Those acts have also
10 adversely affected, and will continue to affect, CrossFit’s business and reputation.
11 The NSCA’s conduct also violates federal and state statutory law, as if set forth
12 fully herein. As such, the NSCA’s acts constitute an unlawful, unfair and/or
13 fraudulent business practice within the meaning of California Business and
14 Professions Code Section 17200.

15 85. Absent injunctive relief, CrossFit has no means by which to control
16 the publication and distribution of the Devor Study and other false, misleading and
17 deceptive statements or assertions by the NSCA. CrossFit is thus entitled to
18 injunctive relief prohibiting the NSCA from continuing such acts of unfair
19 competition. CrossFit also is entitled to disgorgement of the NSCA’s profits.

20 **FOURTH CLAIM FOR RELIEF**

21 **DECLARATORY RELIEF**

22 **(Fed. R. Civ. P. 57 and 28 U.S.C. §§ 2201 and 2202)**

23 86. CrossFit realleges and incorporates by reference the allegations in
24 paragraphs 1 through 85, as if set forth fully herein.

25 87. Pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28
26 U.S.C. §§ 2201 and 2202, this Court may declare the rights or legal relations of
27 any party in any case involving an actual controversy.

28

1 88. An actual controversy has arisen and now exists between CrossFit and
2 the NSCA, in that CrossFit contends that the Devor Study published by the NSCA
3 makes false, misleading and deceptive statements, assertions and conclusions
4 regarding CrossFit's injury rates. CrossFit is informed and believes, and on that
5 basis alleges, that the NSCA disputes CrossFit's position.

6 89. CrossFit therefore requests and is entitled to a judicial determination
7 that the Devor Study contains false, misleading and/or deceptive statements,
8 assertions and conclusions regarding CrossFit and/or its injury risk, and such a
9 judicial determination of these rights and obligations is necessary and appropriate
10 at this time.

11 **WHEREFORE**, CrossFit prays for the following relief:

12 1. That the Court enter a judgment in favor of CrossFit and against the
13 NSCA on all claims alleged herein.

14 2. That the Court enter a judgment that the NSCA has:

15 a. Falsely advertised CrossFit's injury risk;

16 b. Committed unfair business practices in connection with
17 publishing false, misleading and deceptive statements, assertions and
18 conclusions regarding CrossFit's injury risk; and

19 c. Interfered with CrossFit's goodwill, reputation, and prospective
20 economic advantage.

21 3. That the Court issue a preliminary and, thereafter, permanent
22 injunction against the NSCA and its journals, officers, agents, employees,
23 representatives, and all others in active concert or participation with each of them
24 with notice hereof, enjoining and restraining them from the following:

25 a. Further publishing and distributing any version of the Devor
26 Study, in whole or in part, or reference thereto, to any person or entity;

27 b. Publishing any other advertising, marketing and/or promotional
28 materials that contain false, misleading and/or deceptive statements,

1 assertions and conclusions regarding CrossFit's injury risk, including false,
2 misleading and/or deceptive statements, assertions and conclusions which
3 are consistent with or similar to those made in the Devor Study;

4 c. Making any false and/or disparaging statements or any
5 statements that contain false, misleading and/or deceptive assertions and
6 conclusions regarding any of CrossFit's services, including, in particular,
7 publishing or communicating such statements to consumers or potential
8 consumers of CrossFit's services; and

9 d. Assisting, aiding or abetting any other person or entity in
10 engaging in or performing any of the activities referred to in subparagraphs
11 (a) through (c) above.

12 4. That the Court order the recall of all copies of any version of the
13 Devor Study and any excerpt or portion thereof, including disabling copies
14 available via the Internet over which the NSCA has control; that the NSCA be
15 required to turn over for impound, during the pendency of this action, all
16 advertising, communications, marketing and/or promotional materials in its
17 custody and control that contain false, misleading and/or deceptive statements,
18 assertions and conclusions regarding CrossFit's injury risk, including all copies of
19 the Devor Study; and that the NSCA turn over all matters used to make the above-
20 referenced materials.

21 5. That the Court issue a declaratory judgment that the Devor Study
22 contains false, misleading and/or deceptive statements, assertions and conclusions
23 regarding CrossFit and/or its injury risk.

24 6. That the Court issue a declaratory judgment that the NSCA is not
25 authorized to publish or distribute advertising, marketing and/or promotional
26 materials, nor engage in verbal communications, which contain false, misleading
27 and/or deceptive statements, assertions and conclusions regarding CrossFit and/or
28 its injury risk.

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DEMAND FOR JURY TRIAL

Plaintiff CrossFit demands trial by jury on each of its claims for relief triable before a jury.

Dated: May 12, 2014

Respectfully submitted,

LATHAM & WATKINS LLP
Daniel Scott Schecter

By/s Daniel Schecter
Daniel Scott Schecter
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