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8 DROPBOX, INC.

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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 DROPBOX, INC., a Delaware corporation,) Case No.
14 Plaintiff,)
15 v.) **COMPLAINT FOR**
16 THRU INC., a Delaware corporation,) **DECLARATORY RELIEF**
17 Defendant.) **DEMAND FOR JURY TRIAL**

18
19 Plaintiff Dropbox, Inc. (“Dropbox”) brings this Complaint against defendant Thru Inc.
20 (“Thru” or “Defendant”) and alleges, on personal knowledge as to its own actions and on
21 information and belief as to the actions of others, as follows:

22 **THE PARTIES**

23 1. Dropbox is a Delaware corporation with its principal place of business at 185 Berry
24 Street, Suite 400, San Francisco, California. Dropbox provides software and services relating to
25 online hosting, storage, and synchronization of data, documents, and other content.

26 2. Thru Inc. (“Thru”) is a Delaware corporation with its principal place of business at
27 909 Lake Carolyn Parkway, Irving, Texas. Thru holds itself out as a provider of enterprise file
28 sharing and collaboration services.

BACKGROUND

The DROPBOX Brand

8. Dropbox has, without interruption since at least as early as 2008, used the mark DROPBOX in commerce to promote its software and services to users in the United States and around the world.

9. Dropbox is the owner of the Internet domain name <dropbox.com>, where Dropbox hosts a website prominently featuring the DROPBOX mark. Dropbox also uses the DROPBOX mark with its popular software application or “app,” which is available for download via various online stores.

10. Dropbox’s software and services use the Internet to enable the easy storage, synchronization, and sharing of electronic files. Users who download Dropbox’s software to their computers, tablets, or mobile phones can save files – such as documents, photos, and videos – to designated folders, and these files automatically are synced to the users’ other devices and are accessible from the <dropbox.com> website. With Dropbox’s software, users can access their files anywhere there is Internet access.

11. Dropbox is the owner of a federal trademark registration for the mark DROPBOX in connection with the following goods and services:

- “Computer software and downloadable computer software used to store and share data, documents, files, information, text, photos, images, graphics, music, audio, video, and multimedia content with others via global computer networks, mobile telephones, and other communications networks for the purpose of file back up and synchronization, not including software for use in database management in the field of life sciences research or software for uploading or transferring advertising programs and media advertising communications” in International Class 9;
- “Storage of electronic media, namely, data, documents, files, text, photos, images, graphics, music, audio, video, and multimedia content” in International Class 39; and
- “Providing temporary use of non-downloadable computer software used to store and share data, documents, files, information, text, photos, images, graphics, music, audio, video, and multimedia content with others via global computer networks, mobile telephones, and other communications networks for the purpose of file back up and synchronization, not including software for use in database management in the field of biomedical research or software for uploading or transferring advertising programs and media advertising communications; hosting of digital content on the internet” in International Class 42.

1 The application for this registration was filed on September 1, 2009 and assigned Serial No.
2 77817716. The registration issued on February 4, 2014. A true and correct copy of the Certificate
3 of Registration for Reg. No. 4478345 (the “Registration”) is attached hereto as Exhibit A and
4 incorporated by reference.

5 12. Thru did not oppose Dropbox’s application for the Registration at the USPTO.
6 However, three other claimants initiated opposition proceedings before the USPTO’s Trademark
7 Trial and Appeal Board, each claiming superior rights to the DROPBOX mark. Each of these
8 trademark oppositions was ultimately terminated.

9 13. In connection with one of the oppositions to Dropbox’s trademark application,
10 Dropbox acquired additional rights to the DROPBOX mark from a claimant, Officeware
11 Corporation. These additional trademark rights are also senior to those now asserted by Thru, and
12 include a federal trademark application for the mark DROPBOX in connection with the following
13 services:

- 14 • “Providing online non-downloadable software for uploading and transferring files for the
15 purpose of file back up and synchronization, not including software for uploading or
16 transferring advertising programs and media advertising communications” in
International Class 42.

17 This application was filed on April 12, 2010 and has been assigned Serial No. 85012206. A true
18 and correct copy of the application from the USPTO’s TSDR database is attached hereto as
19 Exhibit B and incorporated by reference.

20 14. Dropbox also owns common-law rights to the following design incorporating the
21 DROPBOX mark:



26 15. Dropbox has enjoyed extraordinary commercial success. There are now over 300
27 million registered users of Dropbox’s software and services, uploading over one billion files every
28 day. Over four million businesses use Dropbox’s software and services, including 97% of Fortune

1 500 companies. Dropbox's software "app" has been downloaded well over a hundred million
2 times from the online stores the Apple App Store and Google Play.

3 16. Dropbox's DROPBOX mark has been featured in prominent news reports and
4 articles (*The New York Times*, *The Los Angeles Times*, *The Wall Street Journal*, *San Jose Mercury*
5 *News*, *San Francisco Chronicle*, *Bloomberg*, *Reuters*, *FORTUNE*, *Forbes*, *Business Week*, *Time*,
6 *USA Today*, etc.) as well as on national television networks.

7 17. Over 90% of the top 100 search results for the term "dropbox" via the Google
8 search engine return information specifically related to Dropbox.

9 18. As a result of the success of Dropbox's software and services, when members of
10 the general public see or hear the mark DROPBOX, they associate it with Dropbox's software and
11 services.

12 19. Dropbox's rights to the DROPBOX mark are senior to those now claimed and
13 asserted by Thru.

14 20. Dropbox intends to continue using the DROPBOX mark in connection with its
15 software and services.

16 **Thru's Sham Assertion of Purported Trademark Rights**

17 21. On November 17, 2011, more than three years after Dropbox adopted the
18 DROPBOX mark, more than two years after the filing of Dropbox's first trademark application,
19 and long after Dropbox's mark had become well known in the marketplace, Thru filed with the
20 USPTO an application for the mark DROPBOX in connection with the following goods and
21 services:

- 22 • "Downloadable computer software for uploading, transferring, downloading, storing, and
23 sharing data, documents, files, information, text, photos, images, graphics, music, audio,
24 video, and multimedia content with others via networks, mobile telephones, and other
25 communications" in International Class 9.
- 26 • "Storage of data, documents, files, information, text, photos, images, graphics, music,
27 audio, video, and multimedia content" in International Class 39.
- 28 • "Providing on-line non-downloadable software for uploading, transferring, downloading,
storing, and sharing data, documents, files, information, text, photos, images, graphics,
music, audio, video, and multimedia content with others via networks, mobile telephones,
and other communications" in International Class 42.

1 This application has been assigned Serial Number 85475272. It has been suspended by the
2 USPTO.

3 22. Following the extraordinary commercial success and popularity of Dropbox's
4 software and services, Thru manipulated its use of the term "dropbox" to manufacture the
5 appearance of trademark rights in the hope of extracting a windfall payoff from Dropbox. In
6 particular, at or around the time it filed its trademark application, Thru began to increase markedly
7 its use of the word "dropbox" on its website and elsewhere in a belated effort to project the
8 appearance of rights to a "dropbox" trademark and to concoct evidence for legal proceedings
9 against Dropbox.

10 23. Thru attempted to create an impression of confusion by explicitly cautioning
11 customers that its offerings were "[n]ot to be confused with the consumer application,
12 Dropbox™." On information and belief, Thru's reference to "the consumer application,
13 Dropbox™," with trademark attribution, was not to Thru, but to Dropbox's popular software
14 "app."

15 24. Thru altered the manner and frequency of its use of the word "dropbox" to attempt
16 to improve its position as a late-comer to the various challenges to the DROPBOX mark before
17 the USPTO.

18 25. Following the filing of its trademark application, and in the midst of the challenges
19 against Dropbox before the USPTO, Thru's attorney sent a letter to Dropbox's attorney stating
20 that Thru was aware of the various disputes involving the DROPBOX mark and asserting that
21 Thru's rights in the mark had priority over those of other claimants. From December 2011 until
22 March 2012, Dropbox engaged in discussions with Thru, but then Thru stopped responding.

23 26. Well over a year later, during which time Dropbox continued to invest in and grow
24 the DROPBOX brand, Thru resumed its claims and demands against Dropbox. Thru's attorney
25 contacted Dropbox's attorney, noting Dropbox's success in overcoming the oppositions before the
26 USPTO and continuing to allege Thru's superior rights to the DROPBOX mark.

27 27. On February 4, 2014, Thru petitioned the USPTO to cancel the Registration on the
28 basis that there is a likelihood of confusion between Thru's purported mark and Dropbox's mark.

1 A copy of Thru's Petition for Cancellation is attached hereto as Exhibit C and incorporated herein.
2 In its petition, Thru claims that it has priority over Dropbox's rights in the DROPBOX mark, and
3 that it "is damaged by" the Registration, which it argues is "a potential obstacle to Thru's right to
4 use and register the mark DROPBOX for its services."

5 28. Thru persisted with further threats and demands against Dropbox. For example, on
6 May 19, 2014, Thru's attorney stated that if resolution "cannot be done in a reasonable amount of
7 time" then Thru would "exercise all options to take advantage of maximizing the value of the
8 asset."

9 29. On October 28, 2014, Thru filed with the USPTO an opposition to Dropbox's
10 trademark application Serial No. 85012206. Thru bases this opposition on the same grounds as its
11 petition to cancel Dropbox's Registration, namely, that "Applicant's mark DROPBOX, when used
12 for the services of the Application . . . so resembles Thru's mark DROPBOX as to be likely to
13 cause confusion or to cause mistake or to deceive." A copy of Thru's Notice of Opposition is
14 attached hereto as Exhibit D and incorporated by reference.

15 30. As described above, Thru has engaged in a deliberate effort to create the illusion of
16 rights to the DROPBOX mark while issuing repeated threats and attacks against Dropbox's
17 increasingly valuable DROPBOX brand. Accordingly, Dropbox files this complaint to affirm its
18 rights.

19 **FIRST CLAIM FOR RELIEF**

20 **(Declaratory Relief)**

21 31. Dropbox realleges and incorporates by reference the allegations of the preceding
22 paragraphs as though fully set forth herein.

23 32. As a result of the actions and statements of Thru, which include allegations of
24 trademark infringement and challenges to Dropbox's commercial use of the DROPBOX mark,
25 there is an actual controversy between Dropbox and Thru as to the parties' rights and legal
26 relations associated with each party's use of the DROPBOX mark. Under all of the
27 circumstances, an immediate, real and substantial controversy exists between the parties, who
28 have adverse legal interests.

1 (e) That, by way of further relief, this Court grant a permanent injunction enjoining and
2 restraining Thru and its officers, directors, agents, servants, employees, and attorneys, and those in
3 active concert or participation with them, from directly or indirectly charging infringement,
4 dilution, or other legal violation, or instituting any action for infringement, dilution, or other
5 violation of alleged rights of Thru in the term “dropbox” against Dropbox or any of Dropbox’s
6 agents, direct or indirect customers, or any person, by reason of the use or registration of
7 Dropbox’s DROPBOX mark.

8 (f) That this Court award to Dropbox its reasonable costs, disbursements, and
9 attorneys’ fees incurred in defending its rights to the DROPBOX mark against the claims and
10 allegations of Thru.

11 (g) That this Court grant such other and further relief as this Court may deem just and
12 proper.

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14 Dated: April 17, 2015

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

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By: /s/ John L. Slafsky
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DEMAND FOR JURY TRIAL

Dropbox hereby demands trial by jury of all issues triable by a jury.

Dated: April 17, 2015

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

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