

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**ACME WIDGET, L.P. and  
AMALGAMATED GADGET, L.P.**

**Plaintiffs,**

**v.**

**R-SQUARED MASTER FUND,**

**Defendant.**

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**Cause No. \_\_\_\_\_**

**PLAINTIFFS' ORIGINAL COMPLAINT AND JURY DEMAND**

**TO THE HONORABLE COURT:**

**COME NOW** Plaintiffs Acme Widget, L.P. and Amalgamated Gadget, L.P. (each a "Plaintiff" and collectively, "Plaintiffs") and file this Original Complaint (the "Complaint") against Defendant R-Squared Master Fund ("Defendant"), and would respectfully show the Court the following:

**I.  
INTRODUCTION**

1. This is an action for trademark infringement and unfair competition arising under the Federal Trademark Act, 15 U.S.C. §§ 1051 *et seq.*, and Texas common law. Plaintiffs, together with their associated and related entities, including R<sup>2</sup> Investments, LDC, a Cayman Islands limited duration company, commonly referred to and pronounced R-Squared Investments ("Plaintiffs' R-Squared"), and which serves as a master fund in Plaintiffs' master-feeder structure to provide investment-related services to accredited investors, bring this action against Defendant. R<sup>2</sup> and R-Squared are not registered trademarks, but Plaintiffs have used these and other related trade names in commerce in connection with investments, trades and related

financial investment services since as early as 1996. During that time, Plaintiffs have obtained the rights to numerous related domain names and have successfully challenged other similar names in the United States by proving their priority and senior status.

2. Defendant was not formed until approximately April 2010. Upon information and belief, Defendant is using the trade name of R-Squared in order to create confusion among investors so that it can profit on the goodwill, reputation and investment success enjoyed by Plaintiffs' R-Squared master fund. Upon information and belief, Defendant has attempted to project itself into the United States to potentially procure U.S. investors by, among other things, advertising its services through interviews with Bloomberg, which interviews have been published in major U.S. news media outlets and on their respective websites. Accordingly, Defendant's use of the R-Squared mark in interviews and, upon information and belief, other promotional, marketing and investor materials disseminated throughout the United States constitutes a clear use of Plaintiffs' R-Squared mark in commerce and in connection with Defendant's attempted creation of confusion and solicitation of U.S. investors and investment banks. Defendant's actions also detrimentally impact Plaintiffs' R-Squared master fund's ability to conduct business with its trading counterparties (*i.e.*, investment banks), since, upon information and belief, many of these same trading counterparties work with Defendant on its investments, and as such, may potentially steer potentially profitable trades and other investment transactions to Defendant believing Defendant is part of Plaintiffs' R-Squared master fund, or conversely, impute any negative news related to Defendant to Plaintiffs' R-Squared master fund. Further, Defendant's use of Plaintiffs' R-Squared trade name would likely cause confusion and irreparable harm to Plaintiffs' reputation and ability to conduct business if governmental authorities or regulators publicly initiated investigations or lawsuits, or took disciplinary or other

actions against the Defendant and such investigations, lawsuits or actions were erroneously attributed to Plaintiffs' R-Squared master fund. Any such public investigation, action or lawsuit mistakenly attributed to or associated with Plaintiffs' R-Squared master fund would have the potential to cripple Plaintiffs' business.

## **II. PARTIES**

3. Plaintiff Acme Widget, L.P. is a Texas limited partnership, which maintains an office at 301 Commerce Street, Suite 3200, Fort Worth, Tarrant County, Texas.

4. Plaintiff Amalgamated Gadget, L.P., is a Texas limited partnership and is the investment manager for Plaintiffs' R-Squared master fund and maintains its principal place of business at 301 Commerce Street, Suite 3200, Fort Worth, Tarrant County, Texas.

5. Defendant R-Squared Master Fund is a Singapore company with its principal place of business at 2-20-5 Akasaka, Tokyo 151-0001, Japan. Defendant may be served with process through the Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

## **III. JURISDICTION & VENUE**

6. This Court has jurisdiction of the subject matter and the parties under the Trademark Act of 1946 (the "Lanham Act"), as amended by the Federal Trademark Dilution Act of 1995 (15 U.S.C. §§ 1051, *et seq.*). This Court has subject matter jurisdiction over such claims pursuant to 28 U.S.C. §§ 1338(a) and 1338(b), 28 U.S.C. § 1331 and 15 U.S.C. § 1121, as set forth below. This Court also maintains jurisdiction over all claims and parties pursuant to 28 U.S.C. § 1332(2), as complete diversity of citizenship exists between the parties and the amount in controversy exceeds \$75,000.00.

7. Venue is proper in this Court under 28 U.S.C. §§1391(b)-(d).

**IV.**  
**FACTUAL BACKGROUND**

**A. Plaintiffs' Business.**

8. Plaintiffs are the owners of the rights in and to R<sup>2</sup>, R-Squared, R-Squared Investments, R<sup>2</sup> Investments, R-Squared Funding, R<sup>2</sup> Funding, R-Squared Caps and R<sup>2</sup> Caps (collectively, the "R-Squared Family of Funds") and have used these trade names in commerce in connection with their investments, trading and related financial investment services since at least as early as 1996.

9. Plaintiff Acme Widget is also the owner of certain domain names, including, but not limited to: *r2investment.com*; *r2investment.net*; *r2investment.org*; *r2investments.com*; *r2investments.net*; *r2investments.org*; *r2funding.com*; *r2funding.net*; *r2cap.com*; *r2caps.com*; *r2cap.net*; *r2caps.net*; *r2inv.com* and *r2inv.net*. Attached hereto as **Exhibit A** is a true and correct copy of a printout evidencing Plaintiff Acme Widget's registered domain names for the R-Squared Family of Funds.

10. The Plaintiffs have also successfully challenged other similar names in the United States by proving their priority and senior status.

11. Plaintiffs have spent significant resources marketing Plaintiffs' R-Squared master fund to accredited investors and continue to promote and market their successful business using the R-Squared Family of Funds marks. Plaintiffs have also spent significant time and resources developing long-term relationships with many of the largest trading counterparties in the U.S. and internationally, that, upon information and belief, Defendant likewise uses.

12. The ongoing success of R-Squared is due at least in part to Plaintiffs' extensive efforts to promote investment products and services using the R-Squared Family of Funds marks.

The Plaintiffs' R-Squared marks have been and are recognized by the public and the industry as originating from a single source, namely the Plaintiffs, and Plaintiffs' R-Squared Family of Funds marks serve to distinguish their products and services from those of other hedge funds with similar trading strategies.

13. The name, reputation and goodwill of Plaintiffs' R-Squared Family of Funds marks are one of Plaintiffs' most valuable corporate assets.

14. Through significant efforts and expense, Plaintiffs have acquired and enjoy substantial goodwill and a valuable reputation through their distinctive R-Squared Family of Funds marks. Plaintiffs maintain high standards of quality and excellence for their investment products and services, and continue to expend a significant amount of time and money to advertise, offer and promote their business through the R-Squared Family of Funds marks.

15. Plaintiffs derive significant revenue from money generated from accredited investors who have specifically sought out Plaintiffs to invest in Plaintiffs' R-Squared master fund due to Plaintiffs' R-Squared master fund's valuable reputation and investment strategies.

**B. Defendant's Infringing Acts.**

16. Upon information and belief, Defendant was formed in or about April 2010 – nearly fifteen years after Plaintiffs' first use of R<sup>2</sup>, R-Squared and the R-Squared Family of Funds marks.

17. In connection with its efforts to attract accredited investors in the United States, Defendant uses the trade name R-Squared and, upon information and belief, prominently displays this mark in its written and online materials.

18. Upon information and belief, through its use of Plaintiffs' R-Squared mark, Defendant has intentionally, and with knowledge, sought to cause confusion, mistake and

deception among U.S. investment professionals and investors. Specifically, Defendant is using Plaintiffs' R-Squared trade name and mark in order to create confusion among investors so that it can profit on the goodwill, reputation and investment success maintained by Plaintiffs through Plaintiffs' R-Squared master fund. Defendant has attempted to project itself into the United States to procure U.S. investors and promote its business to trading counterparties by, among other things, advertising and promoting its services through interviews with Bloomberg and other media sources, which interviews have been published in major U.S. media outlets and on their respective websites. Defendant is using Plaintiffs' R-Squared Family of Funds marks in such interviews and press releases in an attempt to attract U.S. investors to assist Defendant in raising capital and to obtain favorable trading opportunities from trading counterparties. As such, Defendant's actions have certainly had some effect on United States commerce as these actions directly impact potential investors that could be attracted to Plaintiffs' R-Squared master fund. The Bloomberg articles have appeared worldwide and were published by, among others, the following news organizations in the United States, either in print or electronic form, or both:

- a. Bloomberg, July 5, 2010, August 10, 2010, October 15, 2010 and April 8, 2011.
- b. The New York Times, July 6, 2010.
- c. [www.FINalternatives.com](http://www.FINalternatives.com), July 7, 2010.
- d. [www.businessinsider.com](http://www.businessinsider.com), August 8, 2011.
- e. Alternative Market Briefing, February 13, 2012.

A true and correct copy of each article is attached hereto as **Exhibit B**. Further, Defendant's founder, Tan Maruyama, was willingly and purposefully interviewed for the Bloomberg articles and provides numerous quotes throughout.

19. Upon learning of Defendant's infringing acts, Plaintiffs caused a written notice to be sent to Defendant on or about February 24, 2012, demanding that Defendant cease all infringing activities. To date, Defendant has failed to adequately answer Plaintiffs' demand or cease using Plaintiffs' R-Squared marks in the promotion and solicitation of investors that infringes on Plaintiffs' business and operations in the United States.

**C. Injuries to Plaintiffs As a Result of Defendant's Infringing Acts.**

20. Defendant uses the R-Squared moniker in connection with promoting its business, soliciting investors, and, upon information and belief, investing and trading with many of the same trading counterparties as those utilized by Plaintiffs and Plaintiffs' R-Squared master fund.

21. Defendant's use of R-Squared as described above is likely to cause, or upon information and belief, has caused persons in the United States to believe that Defendant's activities are those of Plaintiffs and Plaintiffs' R-Squared master fund, or that Defendant's activities have the license, sponsorship or approval of Plaintiffs and Plaintiffs' R-Squared master fund.

22. Defendant's acts described herein are likely to deceive the public in the United States and result in confusion and unfair competition. For example, should Defendant become the target of public investigation, lawsuits or other actions by regulators or other governmental officials, and such regulatory actions are mistakenly linked to Plaintiffs' R-Squared master fund as the culprit, the business built by Plaintiffs since 1996 would likely be wiped out. The likely confusion caused by Defendant regarding potential regulatory actions could cause Plaintiffs' business to come crashing down and irreparably harm Plaintiffs' reputation.

23. Upon information and belief, without Plaintiffs' consent, Defendant has been and is continuing to use in commerce in the United States a reproduction, counterfeit, copy or

colorable imitation of Plaintiffs' R-Squared mark in connection with the sale, offering for sale, distribution, marketing, promotion or advertising of Defendant's services and such use is likely to cause confusion, mistake, or deception.

24. Further, Defendant's acts described herein directly impact Plaintiffs' R-Squared master fund's investments and trading in the United States, as well as its overall investment strategies and access to trading and investment opportunities. This could further result in diverting investors and investment opportunities away from Plaintiffs and Plaintiffs' R-Squared master fund, as investors and investment industry professionals are confused by Defendant's use of Plaintiffs' R-Squared mark, which is related to and identified with the goodwill and reputation built over many years by Plaintiffs through Plaintiffs' R-Squared master fund. Indeed, a large number of trades and potential trades are brought to Plaintiffs' R-Squared master fund by trading counterparties and other investment professionals based solely on the fund's reputation and goodwill. Those trades are often profitable and should those opportunities mistakenly be diverted to Defendant, Plaintiffs' R-Squared master fund would lose out on substantial business opportunities. Upon information and belief, this plays into Defendant's overall strategy of using the good reputation and success of Plaintiffs' R-Squared master fund to deceive the U.S. investors into investing capital in Defendant's fund instead of Plaintiffs' R-Squared master fund and to cause investment professionals to steer profitable trades and investment opportunities to the Defendant instead of the Plaintiffs' R-Squared master fund.

25. As shown herein, in connection with its investment services, Defendant has been and is continuing to use in commerce, in the United States, a word, term, name, symbol or device or false or misleading description of fact, false or misleading representation of fact which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or



association of Defendant with Plaintiffs' R-Squared master fund or as to the origin, sponsorship, or approval of Defendant's services or commercial activities by Plaintiffs. Plaintiffs believe that they are or are likely to be damaged by such acts.

26. As shown herein, in connection with its investment services, Defendant has been and is continuing to use in commerce, in the United States a word, term, name, symbol or device or false or misleading description of fact, false or misleading representation of fact which in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of Defendant's or Plaintiffs' services or commercial activities. Plaintiffs believe that they are or are likely to be damaged by such acts.

27. Defendant's acts have caused Plaintiffs and Plaintiffs' R-Squared master fund irreparable harm because Defendant's infringement may cause Plaintiffs to lose control of their own reputation. Unless enjoined, the acts of Defendant alleged herein will continue to cause Plaintiffs irreparable harm. Plaintiffs, therefore, have no adequate remedy at law.

28. Defendant's acts described herein are likely to injure Plaintiffs' business reputation or are likely to dilute the distinctive quality of Plaintiffs' R-Squared marks.

29. Defendant's acts of infringement described herein have caused and, unless restrained, will continue to cause actual confusion among investors, potential investors, investment professionals, trading counterparties, regulators and legislators in the United States.

## **V. CAUSES OF ACTION**

### **COUNT ONE: Trademark Infringement (Lanham Act Section 32, 15 U.S.C. § 1114).**

30. Plaintiffs incorporate the allegations contained above and below as if stated herein.

31. Defendant's use of R-Squared, as set forth above, constitutes infringement of Plaintiffs' R-Squared marks in violation of the Lanham Act.

32. Defendant's unauthorized use, and intended use, of marks identical to or likely to be confused with Plaintiffs' marks, without Plaintiffs' consent, for the purpose of marketing, promoting and advertising Defendant's investment products and services, continues to cause confusion, mistake and deception in the minds of investors and investment professionals in violation of the Lanham Act.

33. The infringements of the Plaintiffs' R-Squared marks by Defendant were and are willful and deliberate.

34. Defendant's conduct is causing Plaintiffs immediate and irreparable injury for which Plaintiffs have no adequate remedy at law.

35. Plaintiffs are therefore entitled to recover monetary damages and their attorney's fees and costs of litigation in the manner provided by the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*

**COUNT TWO: Trademark Dilution (Lanham Act Section 43, 15 U.S.C. § 1125(c)).**

36. Plaintiffs incorporate the allegations contained above and below as if stated herein.

37. Defendant's continued illegal and misleading use of Plaintiffs' marks dilute the reputation, goodwill and industry trust associated with Plaintiffs and Plaintiffs' R-Squared master fund and their services in violation of 15 U.S.C. § 1125(c).

38. Plaintiffs are therefore entitled to recover monetary damages and attorney's fees and costs of litigation in the manner provided by the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*

**COUNT THREE: Unfair Competition (Lanham Act Section 43, 15 U.S.C. § 1125(a)).**

39. Plaintiffs incorporate the allegations contained above and below as if stated herein.

40. Defendant has used, and continues to use, the Plaintiffs' R-Squared mark in an attempt to trade on the goodwill of Plaintiffs and Plaintiffs' R-Squared master fund in the eyes of trading counterparties, U.S. investors and U.S. investment professionals.

41. Defendant's use of Plaintiffs' R-Squared marks constitutes a false designation of origin or description and misrepresents the nature of Defendant's activities by erroneously and explicitly confusing Defendant's information and materials as coming from, connected with, or sponsored by Plaintiffs and Plaintiffs' R-Squared master fund.

42. Defendant's acts are in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

43. Plaintiffs are therefore entitled to recover monetary damages and their attorney's fees and costs of litigation in the manner provided by the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*

**COUNT FOUR: Trademark Dilution (Texas Business and Commerce Code § 16.29).**

44. Plaintiffs incorporate the allegations contained above and below as if stated herein.

45. Defendant's continued illegal and misleading use of Plaintiffs' R-Squared marks dilutes the reputation, goodwill and industry trust associated with Plaintiffs and Plaintiffs' R-Squared master fund and their services in violation of Texas Business and Commerce Code § 16.29.

46. Plaintiffs are therefore entitled to recover monetary damages as sought herein.

**VI.**  
**APPLICATION FOR INJUNCTIVE RELIEF**

47. Plaintiffs incorporate the allegations contained above and below as if stated herein.

48. Plaintiffs seek injunctive relief from this Court pursuant to equitable and statutory principles under 15 U.S.C. § 1116 and Texas Rule of Civil Procedure 680.

49. As shown above, Plaintiffs have a probable right of recovery in this action. In addition, Plaintiffs have suffered, and will continue to suffer, immediate and irreparable harm to their business as a proximate result of Defendant's conduct. The total damages caused by Defendant's activities are not readily quantifiable or measurable, and will likely be unrecoverable.

50. Based on the foregoing, Plaintiffs pray that upon motion, order, or trial, an injunction, either preliminary and /or permanent, be issued, as specified below.

**VII.**  
**JURY DEMAND**

51. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury for all issues triable by jury.

**VIII.**  
**PRAYER**

WHEREFORE, Plaintiffs pray that Defendant be cited to appear and answer herein and that the Court enter judgment that Plaintiffs have and recover from Defendant as follows:

- a. A judgment that Defendant has infringed Plaintiffs' trademarks;
- b. A judgment that Defendant has diluted Plaintiffs' trademarks;
- c. A judgment that Defendant has unfairly competed with Plaintiffs, in violation of the Lanham Act;
- d. That Defendant, its officers, agents, servants, employees and all persons in concert or

participation with Defendant be preliminarily and permanently enjoined from:

- (i) Directly or indirectly infringing Plaintiffs' trademarks;
  - (ii) Diluting the distinctive quality of Plaintiffs' trademarks;
  - (iii) Selling or marketing products or services that in any way tend to deceive, mislead or confuse the public, investors and investment professionals into believing that Defendant's products or services are in any way sanctioned by or affiliated with Plaintiffs or Plaintiffs' R-Squared master fund; and
  - (iv) Otherwise competing unfairly with Plaintiffs and Plaintiffs' R-Squared master fund.
- e. That Defendant be required to account for all gains, profits and advantages derived from its acts of infringement, unfair competition, and for its other violations of law;
- f. That, pursuant to 15 U.S.C. § 1117, Plaintiffs be awarded an amount equal to (i) Defendant's profits, (2) Plaintiffs' and Plaintiffs' R-Squared master fund's damages, and (3) the costs and attorneys' fees of bringing this action; and
- g. That Plaintiffs be granted all other relief to which they are entitled in law or equity.

Respectfully submitted,

/s/ Brant C. Martin

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