

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): CrossFit, Inc. **Defendant(s):** Jeff Martin ; Mikki Lee Martin ; Brand X Martial Arts

County of Residence: Outside the State of Arizona County of Residence: Outside the State of Arizona
County Where Claim For Relief Arose: Outside the State of Arizona

Plaintiff's Atty(s): Defendant's Atty(s):
Matthew P. Fischer, Trisha D. Farmer
Snell & Wilmer L.L.P.
400 E Van Buren
Phoenix , Arizona 85004
602-382-6700

II. Basis of Jurisdiction: **4. Diversity (complete item III)**

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:-5 Non AZ corp and Principal place of Business outside AZ
Defendant:-2 Citizen of Another State

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **190 Other Contract**

VI.Cause of Action: **28 U.S.C. 1332. Breach of affiliate agreement and trademark infringement under 15 U.S.C. 1051 et seq.**

VII. Requested in Complaint

Class Action: **No**

Dollar Demand:

Jury Demand:

VIII. This case is not related to another case.

Signature: /s Trisha D. Farmer

Date: 10/14/14

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

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22 Attorneys for Plaintiff
23 CrossFit, Inc.

24 UNITED STATES DISTRICT COURT
25 FOR THE DISTRICT OF ARIZONA

26 CrossFit, Inc., a Delaware corporation,

27 Plaintiff,

28 v.

Jeff Martin, an individual; Mikki Lee
Martin, an individual, and Brand X
Martial Arts, a business entity of
unknown origin,

Defendants.

No.

**COMPLAINT FOR TRADEMARK
INFRINGEMENT AND BREACH OF
CONTRACT**

Plaintiff CrossFit, Inc. ("Plaintiff" or "CrossFit, Inc.") complains and alleges as follows against Defendants Jeff Martin, Mikki Martin, and Brand X Martial Arts (collectively, "Defendants").

1 **THE NATURE OF THE ACTION**

2 1. CrossFit, Inc. brings this civil action to redress Defendants’
3 misappropriation of CrossFit, Inc.’s intellectual property and brand in a manner that is
4 confusing to the public and tarnishes CrossFit, Inc.’s reputation. Accordingly, CrossFit,
5 Inc. brings this action at law and equity for trademark infringement and cybersquatting,
6 arising under the Trademark Act of 1946, 15 U.S.C. § 1051, *et seq.*, as amended by the
7 Trademark Counterfeiting Act of 1984, and the Anticybersquatting Consumer Protection
8 Act of 1999 (“ACPA”) (collectively, the “Lanham Act”), and for breach of contract under
9 the laws of the State of Arizona.

10 **THE PARTIES**

11 2. CrossFit, Inc. is a Delaware corporation, whose principal place of business
12 is 1250 Connecticut Ave N.W., Suite 200, Washington D.C. 20036.

13 3. CrossFit, Inc.’s primary business involves: (a) credentialing personal
14 trainers through certificate courses and certification; (b) licensing CrossFit®-branded
15 gyms to approved affiliates that have completed CrossFit, Inc.’s Level I ANSI-accredited
16 course and passed the exam, signed an affiliate agreement, and paid the annual license fee;
17 (c) providing specialty courses in given subject areas, such as CrossFit Gymnastics, or
18 Weightlifting – this also includes “CrossFit Kids”; (d) coordinating an annual worldwide
19 fitness competition known as the “CrossFit Games”; (e) disseminating fitness and
20 nutrition information through the “CrossFit Journal”; and (f) selling CrossFit®-branded
21 merchandise through the “CrossFit Store” on CrossFit, Inc.’s website.

22 4. CrossFit, Inc. began in the United States but now has licensed affiliates in
23 116 countries on six continents.

24 5. CrossFit, Inc. disseminates through its primary website, www.crossfit.com,
25 daily workout information known as the “Workout of the Day” or “WOD.” CrossFit, Inc.
26 has used the registered trademark “CrossFit®” in the United States for personal fitness
27 services since at least 1985.
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1 6. Upon information and belief, Defendants Mikki Martin and Jeff Martin,
2 individuals residing in Ramona, California, are CrossFit, Inc. affiliates (“CrossFit Brand
3 X”) who transact business and contract to offer CrossFit® brand training services in
4 Ramona, California, and operate at least the following website: www.crossfitkids.com
5 (the “Infringing Domain Name”).

6 7. Upon information and belief, Defendant Brand X Martial Arts (“Brand X”) is an unknown business entity organized under the laws of California. Upon information
7 and belief, Defendant Brand X is controlled in part or in whole by Defendants Jeff Martin
8 and Mikki Martin, and the obligations of Defendants Jeff Martin and Mikki Martin are
9 also the obligations of Defendant Brand X.
10

11 8. Upon information and belief, Defendants Jeff Martin and Mikki Martin
12 organized Brand X in order to conduct business using at least the following CrossFit, Inc.
13 trademarks: “CrossFit®,” and “CrossFit Kids” (collectively, the “CrossFit Marks”).

14 9. Upon information and belief, there is no separateness between Defendants
15 Jeff Martin, Mikki Martin and Brand X, and it would be inequitable if Brand X were not a
16 party to this action. Upon information and belief, Brand X is a device by which Jeff
17 Martin and Mikki Martin evade obligations in bad faith under the CrossFit, Inc. Affiliate
18 Agreement Jeff Martin accepted and signed on August 12, 2004 and the subsequent
19 CrossFit, Inc. Affiliate Agreement Mikki Martin accepted and signed on November 13,
20 2012.

21 10. Defendants Jeff Martin and Mikki Martin are husband and wife and all acts
22 alleged herein were undertaken both for their separate benefit, and for the benefit of their
23 marital community, which is liable for the claims asserted herein. Defendants Jeff Martin,
24 Mikki Martin, and Brand X when referred to collectively, shall be referred to as
25 “Defendants.”

26 11. CrossFit, Inc. is informed and believes and on that basis alleges that, at all
27 times mentioned in this Complaint, each of the Defendants was the agent and/or alter ego
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1 of each of the other Defendants and, in doing the things alleged in this Complaint, were
2 acting within the course and scope of any such agency.

3 **JURISDICTION**

4 12. This Court has original jurisdiction over this action pursuant to 28 U.S.C.
5 §§ 1331 and 1338, and 15 U.S.C. §§ 1116 and 1121. This Court has supplemental
6 jurisdiction over CrossFit, Inc.'s claims brought under the laws of the State of Arizona,
7 pursuant to 28 U.S.C. § 1367, because those claims form part of the same case or
8 controversy as CrossFit, Inc.'s claims brought under federal law.

9 13. This Court has original jurisdiction over this action pursuant to 28 U.S.C.
10 § 1332, as there is diversity of citizenship among the parties and the amount in
11 controversy is greater than \$75,000.

12 14. This Court has personal jurisdiction over Defendants, in that Defendants
13 have contractually agreed to submit to the jurisdiction of the federal courts located in
14 Arizona.

15 **VENUE**

16 15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3), in that
17 there is no district in which this action may otherwise be brought and Defendants have
18 contractually agreed to submit to the personal jurisdiction of the federal courts located in
19 Phoenix, Arizona.

20 **FACTUAL BACKGROUND**

21 **The CrossFit® Fitness Program**

22 16. CrossFit, Inc. provides a unique fitness program for strength and
23 conditioning, a program that is one of the most recognized brands in the exercise and
24 personal fitness markets. CrossFit, Inc. is known for its distinctive program design,
25 superb results, and a robust support network for both CrossFit, Inc. affiliated gyms and
26 individual adherents to the CrossFit® brand workout program.

1 17. Since at least 1985, CrossFit, Inc. has continuously used the mark
2 “CrossFit®” in commerce to designate its distinctive program, which is easily identifiable
3 by a trademark instantly recognized in the exercise and personal fitness markets. The
4 mark “CrossFit®” has been registered on the Principal Register of the United States
5 Patent and Trademark Office since at least 2005. (Trademark Reg. No. 3007458). This
6 trademark registration has not been abandoned, canceled, or revoked.

7 18. In marketing its products, CrossFit, Inc. spends substantial sums of money
8 to develop its marketing materials, such as its website, brochures, CrossFit®-branded
9 clothing and fitness gear, catalogs, and other related materials, including original
10 photographs and descriptions of products. CrossFit, Inc. has also made substantial
11 financial investments in the marketing, promotion, and advertising of CrossFit, Inc.’s
12 brand of fitness services in connection with the mark “CrossFit®” and in the protection of
13 CrossFit, Inc.’s valuable intellectual property rights.

14 19. In order to make its fitness techniques widely available, CrossFit, Inc. offers
15 training courses, from novice to advanced, through an accredited (by the American
16 National Standards Institute, or “ANSI”) program that includes testing, as well as annual
17 audits of the program. Those individuals and entities that understand and agree with
18 CrossFit, Inc.’s philosophy – and have completed the requisite entry level course,
19 requirements, and written examination – are eligible to apply to become licensed CrossFit
20 Affiliates.

21 20. CrossFit, Inc. affiliates are licensed to open individual gyms using the mark
22 “CrossFit®” either before or after the rest of their name – for example “CrossFit
23 San Diego” or “East Valley CrossFit.”

24 21. Genuine CrossFit, Inc. fitness programs are offered only through these
25 authorized affiliates, using trainers certified by CrossFit, Inc., in order to ensure that
26 CrossFit, Inc.’s unique brand of fitness services produces the best result for each CrossFit,
27 Inc. affiliate’s clients and preserves CrossFit, Inc.’s brand.
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1 22. As a result of the high level of quality and superb results of the
2 comprehensive brand of its fitness services, CrossFit, Inc. has achieved an outstanding
3 reputation among both CrossFit, Inc. affiliates and their clients. The mark “CrossFit®”
4 has become well and favorably known in the industry and to the public as the exclusive
5 source of CrossFit®-branded fitness services and has come to symbolize the goodwill
6 built up by CrossFit, Inc.

7 23. Conversely, fitness programs offered by unlicensed entities without
8 authorization do not offer the comprehensive level of quality, network of support, and
9 opportunities the public has come to associate with the mark “CrossFit®” and thus do not
10 offer clients the true CrossFit® brand fitness program.

11 **Jeff and Mikki Martin and the CrossFit, Inc. Affiliate Agreement**

12 24. On August 12, 2004, Defendants Jeff and Mikki Martin entered into an
13 affiliate agreement with CrossFit, Inc., which granted Defendants Jeff and Mikki Martin
14 permission through a limited license to use CrossFit, Inc.’s intellectual property. The
15 chosen name for Defendants Jeff and Mikki Martins’ CrossFit, Inc. affiliate was “Brand X
16 Martial Arts”.

17 25. On November 13, 2012, Defendants Jeff and Mikki Martin entered into an
18 updated CrossFit Affiliate Agreement (attached hereto as Exhibit A, hereinafter referred
19 to as the “Affiliate Agreement”). Defendants’ affiliate name was changed to “CrossFit
20 Brand X” and Defendants were given permission to use CrossFit, Inc.’s intellectual
21 property, again subject to the terms of the Affiliate Agreement.

22 26. The Affiliate Agreement provides, *inter alia*, that:

- 23 • “Subject to the terms and conditions of this Agreement, during the Term,
24 CrossFit grants to Affiliate and Affiliate accepts a limited, revocable, non-
25 exclusive, non-transferable, non-assignable, non-delegable, and non-
26 sublicenseable license to use the CrossFit name, trademarks, trade names,
27 service marks or logos designated in writing by CrossFit.” (Exhibit A at
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1 1.1(a);

- 2 • “Affiliate shall not display, exhibit, distribute or otherwise use the Licensed
3 Marks to promote, advertise, market, support or exploit any ancillary or
4 other business(es) other than physical training based on the Licensed
5 Services without the prior, express written permission of CrossFit in each
6 instance, which permission may be granted or withheld in CrossFit’s sole
7 and absolute discretion.” (Exhibit A at 1.1(b));
- 8 • “Affiliate will present its proposed Internet domain name to CrossFit for
9 CrossFit’s prior approval prior to registering any such domain name. If
10 CrossFit does not approve (in its sole discretion) of the Internet domain
11 name at any time, Affiliate will abandon the Internet domain name, or
12 transfer the Internet domain name to CrossFit, at CrossFit’s discretion.
13 Upon termination or expiration of this Agreement, Affiliate shall
14 immediately transfer any domain name incorporating the Licensed Marks to
15 CrossFit.” (Exhibit A at 1.1(c));
- 16 • “Affiliate shall not use the Licensed Marks or any CrossFit name and/or any
17 of CrossFit’s trademarks, trade names, service marks or logos owned,
18 controlled or licensed by CrossFit in any manner other than as expressly
19 provided for in this Agreement and without CrossFit’s prior written
20 approval in each instance. CrossFit may add, remove, modify, suspend,
21 substitute or replace any Licensed Mark, in whole or in part, or any element
22 or feature of the Licensed Services, in its sole and absolute discretion. All
23 rights not specifically granted herein by CrossFit are expressly reserved.”
24 (Exhibit A at 1.1(d));
- 25 • “Affiliate shall use the Licensed Marks only in forms approved by CrossFit
26 and shall comply with CrossFit’s branding guidelines provided or made
27 available to Affiliate. Affiliate shall not create, display, promote, advertise,
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1 distribute or use, directly or indirectly, any derivative, modification or
2 confusingly similar version of any Licensed Marks or any other CrossFit
3 name, logo, trademark, trade name or service mark (i.e., x-fit), in whole or
4 in part.” (Exhibit A at 1.2(a));

- 5 • “Affiliate will immediately cease any use of the Licensed Marks at
6 CrossFit’s request.” (Exhibit A at 1.2(b));
- 7 • “Affiliate acknowledges that it has no interest in the Licensed Marks other
8 than the license granted under this Agreement and that CrossFit shall remain
9 the sole and exclusive owner of all right, title and interest in and to the
10 Licensed Marks and all modifications, updates, improvements, derivative
11 works and enhancements related thereto, whether made by Affiliate and
12 whether during or after the Term. Affiliate hereby irrevocably assigns,
13 transfers, releases and conveys to CrossFit, from the moment of its creation,
14 all right, title and interest in and to any modification, enhancement, update,
15 improvement or derivative work related to or based on the Licensed Marks
16 and all intellectual property rights embodied in or pertaining to any of the
17 foregoing. Affiliate agrees that Affiliate’s use of the Licensed Marks and
18 any goodwill in the Licensed Marks resulting from Affiliate’s use will inure
19 solely to the benefit of CrossFit and will not create any right, title or interest
20 for Affiliate in the Licensed Marks.” (Exhibit A at 1.3(a));
- 21 • “Affiliate shall not do or cause to be done any act or thing contesting,
22 opposing or challenging or in any way impairing or tending to impair any of
23 CrossFit’s right, title, and/or interest in or to the Licensed Marks (or any
24 portion thereof) and/or any other CrossFit marks, products, goods or
25 services.” (Exhibit A, at 1.3(b));
- 26 • “Affiliate also waives and agrees never to assert any moral rights or artist’s
27 rights against CrossFit with respect to any of the intellectual property rights
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1 described above. For the purposes of this Agreement, “moral rights” or
2 “artist’s rights” means any right to (i) divulge the Licensed Marks to the
3 public; (ii) retract the Licensed Marks from the public; (iii) claim authorship
4 of the Licensed Marks; (iv) object to any distortion, mutilation or other
5 modification of the Licensed Marks; or (v) any and all similar rights that
6 affect ownership, control, or modification the Licensed Marks, existing
7 under judicial or statutory law of any country or jurisdiction in the world, or
8 under any treaty regardless of whether or not such right is called or
9 generally referred to as a moral or artist’s right.” (Exhibit A, at 1.3 (c)); and
10 • “Nothing herein in any way shall give Affiliate any right, title or interest in
11 or to the Licensed Marks (or any portion thereof) and/or any other CrossFit
12 name, trademarks, trade names, service marks, logos, products, goods,
13 services or any right to develop, license, sublicense, publish, perform, use,
14 modify, create derivative works of, reproduce, distribute or exploit any of
15 the foregoing. CrossFit’s provision of any materials or equipment to
16 Licensee to use in connection with the Licensed Marks or Promotional
17 Materials shall not imply a change of ownership therein, and all such
18 materials and equipment shall remain the property of CrossFit.” (Exhibit A,
19 at 1.3(e)).

20 27. Defendants remain subject to the terms of the Affiliate Agreement.

21 **Jeff and Mikki Martin and the CrossFit Kids Program**

22 28. CrossFit, Inc. owns and operates several “Specialty Courses” which utilize,
23 with CrossFit, Inc.’s consent, the registered CrossFit® trademark name, including, but not
24 limited to, CrossFit Kids Trainer Course, CrossFit Defense, CrossFit Endurance and
25 CrossFit Football Seminar, among others. Written materials and other curriculum are
26 often used in connection with the Specialty Courses, such as training manuals, artwork,
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1 marketing and other related intellectual property. These courses are run by “SMEs” or
2 “Subject Matter Experts” and the course heads are frequently known by this term.

3 29. After signing their affiliate agreement in 2004 and with CrossFit, Inc.’s
4 approval, Defendants Jeff and Mikki Martin launched the CrossFit Kids program, a
5 method for teaching CrossFit, Inc.’s unique brand of fitness services and its principles to
6 children.

7 30. Like prior, and subsequent, Subject Matter Experts (SME’s), Defendants
8 Jeff and Mikki Martin were offered generous terms to run the program under CrossFit,
9 Inc.’s auspices: this included an 80/20% split, where Defendants were allowed to keep
10 80% of all proceeds and 20% would accrue to CrossFit, Inc. for the license, as well as
11 expenses surrounding the posting and administration of the program. The Defendants
12 were the second of three SMEs granted license to use the “CrossFit” name in 2005: the
13 others were Mike Burgener offering “CrossFit Weightlifting” seminars and Jeff Martone
14 teaching “CrossFit Kettlebell” courses.

15 31. In or around August 2007, with CrossFit, Inc.’s permission, Defendants
16 launched www.crossfitkids.com (the Infringing Domain Name) and developed content for
17 a CrossFit Kids seminar and training team.

18 32. In or around 2008, with CrossFit, Inc.’s permission, Defendants began
19 selling “CrossFit Kids Elementary School Plans” on the www.crossfitkids.com website.
20 CrossFit, Inc. allowed Defendants Jeff and Mikki Martin to keep the proceeds from the
21 sale of the school plans. In that same year, Defendants Jeff and Mikki Martin, again with
22 CrossFit, Inc.’s permission, started conducting “CrossFit Kids” seminars, much as other
23 SMEs offered CrossFit Kettlebell/Weightlifting/etc. courses. Like other such courses, it
24 was listed on the www.crossfit.com website.

25 33. In 2008 Defendants Jeff and Mikki Martin were allowed to begin offering a
26 CrossFit Kids Affiliation, wherein CrossFit, Inc. affiliates that wanted to have a
27 “certified” CrossFit Kids program would pay a fee after completion of the course.
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1 CrossFit, Inc. allowed Defendants Jeff and Mikki Martin to keep the proceeds from the
2 seminars and the CrossFit Kids Affiliations. Proceeds were paid from CrossFit, Inc. to
3 Defendants Jeff and Mikki Martin.

4 34. Defendants Jeff and Mikki Martin are also selling the CrossFit Kids
5 Curriculum on www.crossfitkids.com which consists of: (1) Preschool; (2) Elementary;
6 and (3) Pre-Teen/Teen written lesson plans (collectively, the “CrossFit Kids
7 Curriculum”), the proceeds of which are not shared with CrossFit, Inc.

8 35. In March of 2009, Defendants Jeff and Mikki Martin asked CrossFit, Inc.’s
9 permission to trademark “CrossFit Kids.” They were told that this was unnecessary as
10 CrossFit, Inc. owned the “CrossFit®” trademark and that they should not incorporate
11 using the “CrossFit Kids” name. Defendants Jeff and Mikki Martin followed CrossFit,
12 Inc.’s instructions.

13 36. By spring of 2010, CrossFit, Inc. decided to terminate the CrossFit Kids’
14 Affiliation program because it was problematic and burdensome to CrossFit, Inc.’s
15 licensed affiliates. Defendants Jeff and Mikki Martin discontinued the program upon
16 CrossFit, Inc.’s demand and stopped collecting proceeds from the sale of the CrossFit
17 Kids Affiliations in September 2010.

18 37. By January 2011, at Defendants’ instigation because of the lack of growth
19 of CrossFit Kids training courses, CrossFit, Inc. assumed control over the management
20 and operations of the CrossFit Kids Training Course seminars and Defendants Jeff and
21 Mikki Martin were made employees of CrossFit, Inc. and were paid a salary to
22 compensate them for their continued efforts and work with the CrossFit Kids program.
23 Although not required to do so, CrossFit, Inc. also agreed to share and did share the net
24 profits generated from the CrossFit Kids Training Course seminars with Defendants Jeff
25 and Mikki Martin.

26 38. Defendants Jeff and Mikki Martin subsequently approached CrossFit, Inc.
27 and complained that they were unhappy about the amount of money they were earning
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1 from their salaried positions and from the share of the net profits in the CrossFit Kids
2 Training Course. In response, on or about May 1, 2011, CrossFit, Inc. increased
3 Defendants Jeff and Mikki Martin's salaries by 100% but discontinued the sharing of the
4 net profits in the CrossFit Kids Training Course seminars with them.

5 39. Defendants Jeff and Mikki Martin are currently employees of CrossFit, Inc.
6 and they have not received any share of the net profits in the CrossFit Kids Training
7 Course seminars since May 1, 2011.

8 40. In March 2014, CrossFit, Inc. requested that Defendants Jeff and Mikki
9 Martin transfer the www.crossfitkids.com domain and related email accounts to CrossFit,
10 Inc. Defendants Jeff and Mikki Martin refused and asserted that they were the rightful
11 owners of the CrossFit Kids program, that CrossFit, Inc. had no intellectual property
12 ownership in CrossFit Kids and that Defendants Jeff and Mikki Martin had no obligation
13 to turn this property over to the company.

14 41. Since March 2014, CrossFit, Inc. advised Defendants Jeff and Mikki Martin
15 that the continued use of the Infringing Domain Name was not authorized. Defendants
16 Jeff and Mikki Martin, however, refuse to comply with CrossFit, Inc.'s demands to
17 relinquish control over the Infringing Domain Name and other CrossFit Kids' property.

18 42. From March 2014 through the present, Defendants Jeff and Mikki Martin
19 continued to make claims of ownership of CrossFit Kids, the Infringing Domain Name
20 and the CrossFit Kids Curriculum. Specifically, Defendants Jeff and Mikki Martin claim
21 that they founded and created CrossFit Kids and that they now own the content and the
22 copyright to all materials and work bearing the CrossFit Kids name. Upon information
23 and belief, such claims are being made in bad-faith as Defendants Jeff and Mikki Martin
24 have continuously affirmed in writing that CrossFit® and CrossFit Kids are the
25 intellectual property of CrossFit, Inc., and that Defendants Jeff and Mikki Martin have
26 been licensing their use since at least 2004.

1 43. Upon information and belief, Defendants Jeff and Mikki Martin are utilizing
2 and operating the Infringing Domain Name with bad-faith intent to profit from the
3 CrossFit, Inc. brand without authorization from CrossFit, Inc.

4 44. Because of Defendants' unauthorized use of the CrossFit Marks, including
5 but not limited to CrossFit Kids, on the website associated with the Infringing Domain
6 Name, Defendants are expressly and falsely representing to consumers the affiliation
7 between CrossFit, Inc. and Defendants, which is limited to the terms of the Affiliate
8 Agreement.

9 45. Defendants' unauthorized use of the CrossFit Marks, including but not
10 limited to CrossFit Kids, also expressly or implicitly represents to consumers that
11 Defendant Brand X Martial Art's services are the "genuine" CrossFit Kids program, even
12 though CrossFit, Inc. is the rightful owner of the CrossFit Kids program.

13 46. Upon information and belief, Defendants know and have known that the
14 CrossFit Kids program cannot be offered except as authorized and directed by CrossFit,
15 Inc. and that CrossFit, Inc. owns CrossFit Kids pursuant to Sections 1.1(a)-(d), 1.2(a)-(b),
16 1.3(a)-(c) and 1.3(e) of the Affiliate Agreement and/or the October 2009 License
17 Agreement.

18 47. CrossFit, Inc. has previously given notice to Defendants of the need for
19 CrossFit, Inc. to control its brand and has demanded that Defendants return property with
20 the registered CrossFit® trademark in it.

21 48. Despite this notice, Defendants refuse to cease and desist and have in fact
22 asserted ownership over the CrossFit® trademark and a demand for an exorbitant sum of
23 money for a "buyout" of CrossFit, Inc.'s intellectual property.

24 **COUNT ONE: BREACH OF CONTRACT**

25 49. CrossFit, Inc. repeats and re-alleges the allegations of paragraphs 1 through
26 48 of this Complaint as if fully set forth herein.

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1 50. CrossFit, Inc. and Defendants, through Defendants Jeff and Mikki Martin,
2 personally and as alter ego for Brand X Martial Arts, have an enforceable contract in the
3 form of the Affiliate Agreement.

4 51. CrossFit, Inc. has performed all acts as required by the Affiliate Agreement.

5 52. Defendants' acts, as described, are in contravention of at least the following
6 terms of the Affiliate Agreement: Sections 1.1(a)-(d), 1.2(a)-(b), 1.3(a)-(c) and 1.3(e).

7 53. Defendants' acts were done without justification and thus constitute breach
8 of the Affiliate Agreement, lawfully entered into by the parties.

9 54. As a result of Defendants' acts, CrossFit, Inc. was harmed and is entitled to
10 injunctive relief and damages resulting from this breach.

11 **COUNT TWO: VIOLATION OF LANHAM ACT**

12 55. CrossFit, Inc. repeats and re-alleges the allegations of paragraphs 1 through
13 54 of this Complaint as if fully set forth herein.

14 56. Defendants' unauthorized use of the CrossFit Marks, in particular CrossFit
15 Kids, and related activities as alleged above, in connection with the domain name
16 www.crossfitkids.com, infringe CrossFit, Inc.'s rights under the Lanham Act in the
17 CrossFit Marks by showing a bad-faith intent to profit from the CrossFit Marks by using
18 the marks in a confusingly similar manner to the CrossFit Marks and/or in a manner
19 dilutive of the CrossFit Marks. Defendants' acts therefore violate 15 U.S.C. § 1125(d).

20 57. As set forth above, CrossFit, Inc. has previously notified Defendants of their
21 obligation to relinquish control over the Infringing Domain Name. However, Defendants
22 have not ceased their ongoing and continuing infringement using the Infringing Domain
23 Name. Accordingly, Defendants' infringement is intentional and willful, or if not
24 intentional and willful, then reckless, or, at the very least, negligent. Further, Defendants'
25 wrongful acts, described herein, in connection with the ongoing infringement, are causing
26 irreparable harm to CrossFit, Inc. for which CrossFit, Inc. has no adequate remedy at law.

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1 4. For an award of attorneys' fees pursuant to A.R.S. § 12-341.01; and

2 5. For any such other and further relief as the Court may deem equitable
3 including, but not limited to, any relief described in Section 11.7 of the Affiliate
4 Agreement.

5 **On the Second Count for Violation of the Lanham Act**

6 6. For forfeiture of the Infringing Domain Name and transfer of the domain
7 names to CrossFit, Inc.;

8 7. For an order preliminarily and permanently enjoining Defendants from
9 further infringing on the CrossFit Marks;

10 8. For actual damages suffered by CrossFit, Inc. and Defendants' profits or,
11 alternatively, for statutory damages of up to \$100,000 per domain name; and

12 9. For attorneys' costs and fees pursuant to 15 U.S.C. § 1117.

13 **On All Counts:**

14 10. For an award of costs incurred in bringing this action pursuant to 28 U.S.C.
15 § 1920;

16 11. For an award of prejudgment interest; and

17 12. For such other and further relief to which CrossFit, Inc. may be entitled as a
18 matter of law or equity, or which the Court deems just and proper.

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1 DATED this 14th day of October, 2014.

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Attorneys for Plaintiff CrossFit, Inc.

20257613

EXHIBIT A

CROSSFIT AFFILIATE AGREEMENT

This CrossFit Affiliate Agreement (the “**Agreement**”) is made and entered into as of November 13, 2012 (“**Effective Date**”) by and between CrossFit, Inc., a Delaware corporation with its principal place of business at 1250 Connecticut Ave. N.W., Suite 200, Washington D.C. 20036 (“**CrossFit**”); and Mikki Martin with his or her principal place of business at 432 Maple Street, Ramona CA 92065 (“**Affiliate**”).

INTRODUCTION

CrossFit provides a fitness program for strength and conditioning. In the interest of making its fitness techniques widely available, CrossFit encourages individuals and entities that understand and agree with the CrossFit philosophy to become Affiliates and to become licensed to use the CrossFit name. The purpose of this Agreement is to make the terms and conditions of the Affiliate relationship clear.

TERMS AND CONDITIONS

1. Grant of Rights.

1.1 Grant and Scope of License

(a) Subject to the terms and conditions of this Agreement, during the Term, CrossFit grants to Affiliate and Affiliate accepts a limited, revocable, non-exclusive, non-transferable, non-assignable, non-delegable, and non-sublicenseable license to use the CrossFit name, trademarks, trade names, service marks or logos designated in writing by CrossFit (“**Licensed Marks**”) solely for the following purposes (“**Licensed Uses**”):

(i) as an element of one CrossFit-approved affiliate name, to wit: CrossFit Brand X; provided, however, that Affiliate shall only use the Licensed Marks as an element of a marketing or “doing business as” name and shall not use the Licensed Marks in whole or as part of the formal or registered name for a partnership, corporation, limited liability company, sole proprietorship or other legal entity; if renewing as a prior affiliate, no further action shall be taken and the status quo is permitted.

(ii) as an element in one CrossFit-related Internet domain name based on the approved CrossFit Affiliate Name, to wit: www.crossfitbrandx.com, unless the Affiliate receives prior, express written permission from CrossFit to register additional Internet domain names, which permission may be granted or withheld in CrossFit’s sole and absolute discretion;

(iii) in connection with CrossFit training at one physical location, to wit:

432 Maple Street Ramona, CA 92065

Affiliate shall provide prior written notice to CrossFit of any change in Affiliate's training location;

(iv) in connection with certain fitness, strength and conditioning training, nutritional practices and related services consistent with the principles of CrossFit (collectively, the "**Licensed Services**"). In this regard, Affiliate shall not market or conduct any training as "CrossFit", "using the CrossFit method" or the like or otherwise incorporating the Licensed Marks unless such training is conducted by a CrossFit licensed trainer and CrossFit Level 1 certificate holder (in good standing with CrossFit) (such individual a "CrossFit Trainer/Certificate Holder") pursuant to the terms and conditions of this Agreement and that certain trainer license agreement between such CrossFit Trainer/Certificate Holder and CrossFit, the terms of which are incorporated herein by reference.

(v) in connection with the advertising, marketing, sale and rendering of Licensed Services at the Affiliate location, including the production of T-shirts and other fitness-specific clothing and/or related items, as well as flyers and business cards promoting the Licensed Services (collectively, "**Promotional Materials**"). Permitted use of the CrossFit name or Licensed Marks in Promotional Materials is limited to materials which use the permitted business name of the Affiliate as stated in (a)(i) above, and shall not include Promotional Materials that use only the CrossFit name, Licensed Marks or any other CrossFit trademark, trade name, service mark, name or logo or use, display or promote the name, logo, trademark, trade name, service mark, insignia or similar element of any individual, entity or third party without CrossFit's prior written permission in each instance, which permission may be granted or withheld in CrossFit's sole and absolute discretion. Promotional Materials expressly exclude a line of performance apparel or goods and Affiliate shall not, directly or indirectly, and shall not facilitate, license, sub-license, encourage or permit others to, develop, design, market, sell or exploit a line of performance apparel or goods or other merchandise using the CrossFit name, Licensed Marks or any CrossFit trademark, trade name, service mark, logo or other intellectual property or proprietary rights of CrossFit. Affiliate shall be solely responsible for obtaining all consents, licenses and other permissions which may be required for using any photographs, music, videos, sound effects, artwork or any other copyrighted, trademarked or other materials from third parties which are used by, distributed, publicly performed or displayed or included in or with any Affiliate website, location or business or Promotional Materials. Promotional Materials includes the CrossFit taglines, "The Sport of Fitness", and "Forging Elite Fitness" (or variations, e.g. "Forging Elite _____", including, 'Athletes' and other appropriate terms), provided that as above, Affiliate will only use these taglines in conjunction with

the Affiliate's name and not the Licensed Marks alone, so as to avoid conveying the impression that the Promotional Materials are from CrossFit HQ.

(b) In order to use the Licensed Marks, Affiliate must conduct training at a physical location. In the event that Affiliate conducts specialized training or other services distinct from the Licensed Services, Affiliate shall in no way imply that such services are approved, endorsed, sanctioned or promoted by CrossFit. Affiliate shall not display, exhibit, distribute or otherwise use the Licensed Marks to promote, advertise, market, support or exploit any ancillary or other business(es) other than physical training based on the Licensed Services without the prior, express written permission of CrossFit in each instance, which permission may be granted or withheld in CrossFit's sole and absolute discretion.

(c) Affiliate will present its proposed Internet domain name to CrossFit for CrossFit's prior approval prior to registering any such domain name. If CrossFit does not approve (in its sole discretion) of the Internet domain name at any time, Affiliate will abandon the Internet domain name, or transfer the Internet domain name to CrossFit, at CrossFit's discretion. Upon termination or expiration of this Agreement, Affiliate shall immediately transfer any domain name incorporating the Licensed Marks to CrossFit.

(d) Affiliate shall not use the Licensed Marks or any CrossFit name and/or any of CrossFit's trademarks, trade names, service marks or logos owned, controlled or licensed by CrossFit in any manner other than as expressly provided for in this Agreement and without CrossFit's prior written approval in each instance. CrossFit may add, remove, modify, suspend, substitute or replace any Licensed Mark, in whole or in part, or any element or feature of the Licensed Services, in its sole and absolute discretion. All rights not specifically granted herein by CrossFit are expressly reserved.

(e) Affiliate shall not market or offer any classes as CrossFit Kids classes ("CrossFit Kids Classes") unless Affiliate has completed a CrossFit-sanctioned CrossFit Kids training course and Affiliate has been approved to offer CrossFit Kids classes. In order to qualify as a CrossFit Kids-sanctioned Affiliate, Affiliate must comply with required background checks and must maintain insurance against child endangerment and molestation naming CrossFit as an additional insured. Such insurance must meet the other requirements set forth in Section 4(b) below. In this regard, Affiliate shall not market or conduct any training as "CrossFit Kids" or "CrossFit Teens" or the like, or otherwise incorporating the Licensed Marks, unless such training is conducted by a CrossFit Level I Certificate Holder (in good standing with CrossFit) who has also complete the requisite CrossFit Kids course.

(f) **FOR UNIVERSITY/LEO/MUNICIPAL AFFILIATES ONLY:** Affiliate shall ensure that it always has a Level I trainer in good standing responsible for conducting all training that is advertised or otherwise held out as CrossFit training. This designee shall be provided by name to Affiliate Support. In the event this designee

changes or is conducted by another Level I trainer in good standing, Affiliate shall seasonably notify CrossFit of the identity of this trainer.

1.2 Form of Use

(a) Affiliate shall use the Licensed Marks only in forms approved by CrossFit and shall comply with CrossFit's branding guidelines provided or made available to Affiliate. Affiliate shall not create, display, promote, advertise, distribute or use, directly or indirectly, any derivative, modification or confusingly similar version of any Licensed Marks or any other CrossFit name, logo, trademark, trade name or service mark (i.e., x-fit), in whole or in part. Affiliate shall include where appropriate the registered trademark designation ® and a statement that the Licensed Marks are used under license from CrossFit, and other proprietary notices as reasonably required by CrossFit or by law. Affiliate shall comply with all applicable laws, rules and regulations pertaining to the proper use and designation of trademarks in each country or territory in which Affiliate uses the Licensed Marks.

(b) CrossFit shall have the right to prohibit any use by Affiliate of the Licensed Marks in connection with Licensed Services or on Promotional Materials if CrossFit believes that the use of such materials by Affiliate will be damaging to or dilutive of the value of the Licensed Marks. Affiliate will immediately cease any use of the Licensed Marks at CrossFit's request.

(c) Affiliate shall comply with all applicable laws, rules and regulations (including, without limitation, truth in advertising) and obtain all appropriate government approvals necessary for its use of the Licensed Marks and in connection with its sale, provision, support, marketing, promotion, training, distribution and advertising of the services in connection with the Licensed Marks.

(d) Affiliate shall not use the Licensed Marks in connection with any activity that is illegal or that defames, ridicules or disparages CrossFit, its founders, employees, agents, sponsors, licensors, licensees or other individual, entity or organization, or each of their products or services, or that otherwise damages the reputation for quality inherent in the Licensed Marks.

1.3 Ownership of Marks

(a) Affiliate acknowledges that it has no interest in the Licensed Marks other than the license granted under this Agreement and that CrossFit shall remain the sole and exclusive owner of all right, title and interest in and to the Licensed Marks and all modifications, updates, improvements, derivative works and enhancements related thereto, whether made by Affiliate and whether during or after the Term. Affiliate hereby irrevocably assigns, transfers, releases and conveys to CrossFit, from the moment of its creation, all right, title and interest in and to any modification, enhancement, update,

improvement or derivative work related to or based on the Licensed Marks and all intellectual property rights embodied in or pertaining to any of the foregoing. Affiliate agrees that Affiliate's use of the Licensed Marks and any goodwill in the Licensed Marks resulting from Affiliate's use will inure solely to the benefit of CrossFit and will not create any right, title or interest for Affiliate in the Licensed Marks.

(b) Affiliate shall not do or cause to be done any act or thing contesting, opposing or challenging or in any way impairing or tending to impair any of CrossFit's right, title, and/or interest in or to the Licensed Marks (or any portion thereof) and/or any other CrossFit marks, products, goods or services. In particular, Affiliate shall not register or attempt to register the Licensed Marks or any CrossFit trademark, trade name, service mark or logo in any jurisdiction and will not oppose CrossFit's registration or use of the Licensed Marks, alone or with other words or designs, in any jurisdiction. Affiliate agrees that upon the termination of this Agreement, Affiliate shall and hereby does assign, transfer, and convey to CrossFit any trade rights, equities, good will, titles, or other rights, title or interest in and to the Name that may have inured to or been obtained by Affiliate.

(c) Affiliate shall promptly notify CrossFit should Affiliate learn of use by a third party of any mark that is identical, derivative of or confusingly similar to any of the Licensed Marks. Affiliate shall take no action with respect thereto except with the prior written authorization of CrossFit. CrossFit may take such action as it in its sole and absolute discretion deems advisable for the protection of its rights in the Licensed Marks. Affiliate shall cooperate fully to assist CrossFit with any legal or equitable action taken by CrossFit to protect CrossFit's rights in the Licensed Marks. Affiliate shall cooperate with CrossFit in the procurement and maintenance of CrossFit's rights in Licensed Marks or intellectual property rights related to the Licensed Marks and Promotional Materials, and shall sign all papers that CrossFit may deem necessary or desirable for vesting CrossFit with all rights granted hereunder to CrossFit throughout the world. In the event that Affiliate is unable or unwilling to obtain such a signature, Affiliate hereby irrevocably designates and appoints CrossFit and its duly authorized officers and agents as Affiliate's agents and attorneys-in-fact to execute and file any application and to do all other lawfully permitted acts to further the prosecution and issuance of trademarks or other intellectual property rights with the same legal force and effect as if executed by Affiliate or any of its employees. Affiliate also waives and agrees never to assert any moral rights or artist's rights against CrossFit with respect to any of the intellectual property rights described above. For the purposes of this Agreement, "moral rights" or "artist's rights" means any right to (i) divulge the Licensed Marks to the public; (ii) retract the Licensed Marks from the public; (iii) claim authorship of the Licensed Marks; (iv) object to any distortion, mutilation or other modification of the Licensed Marks; or (v) any and all similar rights that affect ownership, control, or modification the Licensed Marks, existing under judicial or statutory law of any country or jurisdiction in the world, or under any treaty regardless of whether or not such right is called or generally referred to as a moral or artist's right.

(d) AFFILIATE ACKNOWLEDGES AND AGREES THAT IT IS ONLY ENTITLED TO USE THE LICENSED MARKS WHILE IT IS AN AFFILIATE OF CROSSFIT IN GOOD STANDING.

(e) CrossFit's Reserved Rights. Nothing herein in any way shall give Affiliate any right, title or interest in or to the Licensed Marks (or any portion thereof) and/or any other CrossFit name, trademarks, trade names, service marks, logos, products, goods, services or any right to develop, license, sublicense, publish, perform, use, modify, create derivative works of, reproduce, distribute or exploit any of the foregoing. CrossFit's provision of any materials or equipment to Licensee to use in connection with the Licensed Marks or Promotional Materials shall not imply a change of ownership therein, and all such materials and equipment shall remain the property of CrossFit.

1.4 Good Will and Covenants

(a) Affiliate acknowledges that there is great value and good will associated with the CrossFit name (the "**Name**") and Licensed Marks, and that the Name and Licensed Marks have a secondary meaning in the mind of the public. Affiliate shall use its best efforts to preserve, protect, and enhance the good will and value in the Name and Licensed Marks.

2. Payment

In consideration for use of the Licensed Marks, during the Initial Term and for each renewal term (if any), Affiliate shall pay CrossFit the amount of US\$ 500 ("**Fee**"). Such Fee shall be paid by Affiliate to CrossFit via personal delivery, certified mail, overnight or international courier, or acceptable online payment or wire transfer, no later than _ and, if approved by CrossFit for any one or more Extended Terms, on the anniversary date of such date. Affiliate may not "pay ahead" or attempt to purchase more than a one-year renewal on the anniversary date.

3. Services and Support Offered by CrossFit

(a) During the Term, CrossFit will make available to Affiliate reasonable access to background information in CrossFit's possession that CrossFit has the right to share and distribute in the areas of fitness, strength and conditioning training, including the opportunity to purchase online subscription-based resources such as the CrossFit Journal if made available by CrossFit.

(b) CrossFit may (but is not obligated to), and Affiliate hereby grants CrossFit permission to, include information about Affiliate, Affiliate's location and a link to Affiliate's website on the list of "CrossFit Affiliates" available on CrossFit's primary website (www.crossfit.com) (time, manner, style, placement, size, duration and

messaging to be determined by CrossFit in its sole and absolute discretion), and any future separate site that CrossFit may develop for the listing of Affiliates.

(c) CrossFit may consider Affiliate (in good standing) and its qualified, eligible and approved clients and trainers (qualification, eligibility and approval, including, without limitation, satisfactory completion of any required background checks in the case of CrossFit Kids certificate course or programs, to be determined by CrossFit in its sole and absolute discretion), eligible to attend, subject to availability, space and other restrictions and timely payment of applicable registration fees by Affiliate, for attendance at seminars, trainer certificate course, training sessions, conferences or workshops sponsored by CrossFit.

4. Affiliate's Obligations

(a) Affiliate is solely responsible for and shall bear all costs and liabilities associated with its facility, the organization, programming, membership fees or dues, operation, publicity, marketing, promotion, advertising, equipping, supply, fundraising, funding, incorporation, legal affairs and all other aspects of business, including selection, compensation, monitoring and supervision of employees, contractors, staff members and fitness instructors, training, supervision and monitoring of participants, clients, visitors and patrons, and carrying out the activities of the business in a proper, safe, professional and legal manner. Affiliate shall, at all times, be free to unilaterally establish its own membership fees and dues and terms with respect to membership and use of its facility, and advertise such prices and terms independently in advertisements. CrossFit and its employees or agents shall have no authority to instruct Affiliate as to what its membership fees or dues must be, nor to interfere with the Affiliate's independent establishment of Affiliate's membership fees or dues. Affiliate shall immediately notify CrossFit if and when Affiliate is involved in any legal action or labor dispute in which CrossFit is involved, named or implicated in any way whatsoever.

(b) If located in the United States, Affiliate shall obtain and maintain, during the Term, at its own cost and expense, the following insurance policies: (i) real and personal property coverage; and (ii) comprehensive general liability and professional liability coverage of no less than \$1,000,000.00 combined single limit per occurrence, and \$2,000,000.00 aggregate from a company rated A+ or better by A.M. Best or equivalent, providing protection which is standard or greater in the fitness and health club industry, for the benefit of CrossFit, Greg Glassman, Lauren Glassman, CrossFit's officers, other affiliates, directors, agents and employees, as well as Affiliate, against any claims, suits, loss or damage arising out of Affiliate's business, facility, premises and/or the Licensed Services. Affiliate shall include CrossFit as an additional insured under Affiliate's comprehensive general liability and professional liability insurance policies. As proof of such insurance, a fully paid certificate of insurance shall be submitted to CrossFit for CrossFit's approval prior to the use of the Licensed Marks in association with Affiliate's

business. Thereafter, any proposed changes in any certificates of insurance shall be submitted to CrossFit for CrossFit's prior approval.

(c) Affiliate shall obtain written assumption of risk and waivers of liability, in a form satisfactory to CrossFit, from any individual who uses or participates in the Licensed Services as offered by Affiliate. Such waivers shall be signed in advance of any use or participation in the Licensed Services, and shall release and hold harmless CrossFit, and CrossFit's officers, affiliates, directors, agents, staff, volunteers, suppliers, licensors, licensees and employees from and against any and all actions, judgments, settlements, claims, liabilities, losses, damages, expenses, and costs (including court costs and attorney's fees), including, without limitation, for any property damage, personal injury, death or any other action, claim, liability, loss, damage or expense against Affiliate based on Affiliate's operation of Affiliate's business or premises.

(d) Affiliate shall maintain a CrossFit-approved website with an approved link to the CrossFit Journal on the front page of its website. An Affiliate which is not solely a CrossFit facility shall maintain a CrossFit page on its website with an approved link to the CrossFit Journal.

(e) In no event shall Affiliate require its trainers or employees to execute noncompetition agreements, provided that an Affiliate may protect confidential client information.

(f) Affiliate shall deliver to CrossFit in writing, promptly upon learning thereof, notice of any litigation commenced or threatened against Affiliate that (i) seeks damages in excess of \$5,000.00, (ii) seeks injunctive relief, (iii) alleges criminal misconduct by Affiliate (or any staff member, employee or contractor of Affiliate) or (iv) alleges the violation of any law, rule or regulation.

(g) **UNIVERSITY/LEO/MILITARY/MUNICIPAL AFFILIATES ONLY:** In the event the Affiliate enjoys some form of sovereign immunity or is required to have its own insurance, Affiliate shall provide the maximum insurance coverage/indemnity possible to meet the requirements of sub-paragraphs (b) and (c) of this section. Affiliate shall separately provide a copy of the certificate of insurance, other indemnifying body or agency, to Affiliate Support.

5. Nature of Relationship – Independent Contractor

The parties to this Agreement are independent, and no agency, partnership, joint venture, employee-employer or franchisee-franchisor relationship is intended or created by this Agreement. Neither party shall have any right or authority to assume or create any obligations of any kind or to make any representation or warranty on behalf of the other party, whether express or implied, or the power to bind the other party in any respect whatsoever. Affiliate's personnel involved in its business shall at all times be employees or subcontractors/independent contractors

of Affiliate and not of CrossFit. Affiliate shall be solely responsible for payment of all compensation for such personnel and all related taxes and benefits. It is Affiliate's responsibility to avoid any confusion regarding whether Affiliate's personnel are employees or subcontractors of Affiliate or CrossFit. Affiliate agrees to accept exclusive liability for complying with all applicable state, local and federal laws and any and all laws of the country of Affiliate's residence, as applicable, including, without limitation, obligations such as payment of taxes. Affiliate hereby agrees to indemnify and defend CrossFit against any and all such taxes, payments and obligations, including penalties and interest. NEITHER AFFILIATE NOR ANY OF ITS AGENTS OR EMPLOYEES SHALL PASS ON, ANY EXPRESS OR IMPLIED WARRANTY ON BEHALF OF CROSSFIT TO ANY THIRD PARTIES.

6. Term, Termination, and Renewal

(a) The term of this Agreement will begin on the Effective Date and continue for a period of twelve (12) months ("**Initial Term**") unless terminated in accordance with the provisions of this Agreement. Subject to approval by CrossFit (which may be granted or withheld in CrossFit's sole and absolute discretion), this Agreement may be renewed for one or more additional twelve-month periods (each an "**Extended Term**" and collectively the "**Extended Terms**") upon timely payment of the then current fee. At such time for renewal, Affiliate will sign, agree and acknowledge its acceptance of the most current version of this Agreement. Affiliate may not modify, change, or extend the Initial Term or any Extended Term(s) by "pre-payment" of the Fee or payment of additional renewal fees. The Initial Term and the Extended Term(s) (if any) may collectively be referred to as the "**Term**".

(b) This Agreement is terminable at will by either party. Either party may terminate this Agreement without cause, for any reason or no reason, and without intervention of the courts upon thirty (30) days written notice to the other party. In the event of the termination of this Agreement by CrossFit without cause within the Initial Term of the first License (but not in any Extended Term), CrossFit will return a prorated portion of the Affiliation Fee.

(c) The Agreement may also be terminated by CrossFit immediately upon written notice to Affiliate for any of the following without recourse or an opportunity to cure, if Affiliate:

(i) Files or has filed by or against Affiliate a petition under any section or chapter of the United States Bankruptcy Code or similar law of any other jurisdiction; an assignment by Affiliate for the benefit of creditors; or any appointment of, or an application for the appointment of, a receiver, trustee, controller or custodian for all or part of Affiliate's assets;

(ii) Refuses or fails to perform any of its obligations or covenants under this Agreement or breaches its obligations to either CrossFit or another Affiliate or CrossFit licensee;

(iii) Publicly denounces, slanders, defames or denigrates CrossFit, its officers, principals, or agents either orally, visually or in writing (including through digital or electronic means or methods);

(iv) Makes or made any misrepresentations or omission relating to this Agreement, the license granted herein or in connection with the CrossFit Affiliate application process;

(v) Engages in or persists in conduct that would reflect unfavorably upon CrossFit, the Licensed Marks or upon the operation and reputation of CrossFit's business, including, without limitation, a felony or any other criminal act, conduct or misconduct that would raise a substantial question about the Affiliate's fitness or ability to train others or be in business with CrossFit; or

(vi) Fails to comply with any applicable law, rule or regulation.

(d) CrossFit may terminate this Agreement on 30 days notice or refuse to renew the Agreement upon its expiration if the Agreement or relationship is no longer mutually beneficial as determined by CrossFit in its sole and absolute discretion.

(e) In the event of any termination or expiration of this Agreement, Affiliate shall discontinue immediately all use of the Licensed Marks, and shall immediately transfer ownership of any Internet domain names containing "CrossFit" or other Licensed Mark to CrossFit, Inc. Sections 1.3(a), 1.3(b), 6(e), 6(f), 8, 9, 10 and 11 shall survive any expiration or termination of this Agreement.

(f) The right of either party to terminate this Agreement shall not be affected in any way by its waiver of or failure to take action with respect to any previous default. No termination by CrossFit of its duties and obligations under this Agreement in accordance with this Agreement shall confer on Affiliate any right to damages or any other rights or remedies nor shall it vest in Affiliate any rights, title or interests in and to any of CrossFit's property, the Licensed Marks or otherwise. The rights and remedies provided to CrossFit under this Agreement will not be exclusive and will be in addition to all other rights and remedies available at law or in equity.

7. Not Assignable by Affiliate

Neither this Agreement nor any rights under this Agreement may be granted, assigned, delegated, sublicensed or otherwise transferred by Affiliate, in whole or in part, whether voluntarily or by operation of law, by way of sale of assets, merger or consolidation, or change of control without the prior written consent of CrossFit, which consent may be granted or withheld in CrossFit's sole and absolute discretion. Any attempted or purported assignment without such required consent shall be void and a material breach of this Agreement. CrossFit may grant, assign or sublicense this Agreement or any of its rights or obligations herein in its

sole and absolute discretion. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

8. Affiliate Representation and Warranties; Disclaimers

(a) Affiliate Representations and Warranties. Affiliate represents, warrants and agrees that:

(i) It has all necessary rights and authority to execute and deliver this Agreement and perform its obligations hereunder and to grant to CrossFit all rights purported to be granted herein, and nothing contained in this Agreement or in the performance of this Agreement will place Affiliate in breach of any other contract or obligation.

(ii) It is solely responsible for and shall pay all sums due to any and all parties engaged by Affiliate who are entitled to receive compensation, payment or any other fees in connection with Affiliate's business, premises and program.

(iii) There is no demand, claim, suit, action, arbitration or other proceeding pending or threatened which questions or challenges the ability or right of Affiliate to enter into this Agreement or to perform any of its obligations hereunder or which might affect CrossFit's rights under the terms of this Agreement, nor does there exist any reasonable basis for any such demand, claim, suit, action, arbitration or other proceeding.

(iv) It is financially sound and fiscally capable of performing its obligations, and any material change in such status shall be immediately communicated in writing to CrossFit.

(v) Nothing that Affiliate provides, uses, publishes, displays, performs, distributes, copies, creates or licenses related to the Licensed Marks, Licensed Services, CrossFit or Promotional Materials shall infringe an intellectual property, proprietary or personal right or any other common law or statutory right of any party or defame, impinge upon the right to privacy or the right to publicity of any person or entity.

(vi) It and its agents, independent contractors and employees shall comply with all applicable laws, rules and regulations.

(vii) **UNIVERSITY/LEO/MILITARY/MUNICIPAL AFFILIATES:** The individual signing this Agreement on its behalf has full authority to sign the Agreement and to bind it (the organization, agency, municipality, etc.) fully to the Agreement.

(b) Disclaimers.

Each party acknowledges and agrees that the Licensed Marks and any other information or materials licensed, made available or provided to Affiliate by CrossFit hereunder are licensed or provided on an "as is" basis. EXCEPT AS EXPRESSLY DESCRIBED IN THIS AGREEMENT, CROSSFIT DOES NOT MAKE ANY WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE LICENSED MARKS, LICENSED SERVICES OR ANY MATTER WHATSOEVER. EXCEPT AS EXPRESSLY DESCRIBED IN THIS SECTION, ANY AND ALL WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED BY CROSSFIT. AFFILIATE SHALL NOT HAVE THE RIGHT TO MAKE OR PASS ON, AND SHALL TAKE ALL MEASURES NECESSARY TO ENSURE THAT NEITHER AFFILIATE NOR ANY OF ITS AGENTS OR EMPLOYEES SHALL PASS ON, ANY EXPRESS OR IMPLIED WARRANTY ON BEHALF OF CROSSFIT TO ANY THIRD PARTIES. WITHOUT LIMITING THE FOREGOING, CROSSFIT DOES NOT ENSURE CONTINUOUS, ERROR-FREE, BUG FREE, SECURE OR VIRUS-FREE OPERATION OF ANY CROSSFIT WEBSITE OR ANY PART OR FEATURE THEREOF OR CONTINUED OPERATION OR AVAILABILITY OF ANY GIVEN CROSSFIT CERTIFICATION, SEMINAR OR TRAINING PROGRAM, THE AFFILIATE PROGRAM OR ANY FEATURE OR PART THEREOF.

THE SUCCESS OF CROSSFIT, THE CROSSFIT AFFILIATE PROGRAM, THE LICENSED SERVICES AND THE LICENSED MARKS DEPENDS ON NUMEROUS FACTORS BEYOND CROSSFIT'S CONTROL. AFFILIATE THEREFORE ACKNOWLEDGES AND AGREES THAT USE OF THE CROSSFIT PROGRAM, LICENSED SERVICES AND LICENSED MARKS ARE SPECULATIVE, CROSSFIT DOES NOT MAKE ANY, AND EXPRESSLY DISCLAIMS ALL, REPRESENTATIONS AND WARRANTIES AS TO THE PROFITS, REVENUES OR POTENTIAL SUCCESS OF ANY CROSSFIT PROGRAM, LICENSED SERVICES, LICENSED MARKS OR AFFILIATE PROGRAM OR BUSINESS AND NO LIABILITY SHALL BE IMPOSED UPON CROSSFIT BASED ON ANY CLAIM THAT (I) MORE SALES, RECEIPTS OR REVENUE COULD HAVE BEEN MADE OR EARNED AND/OR (II) BETTER PRICES OR TERMS COULD HAVE BEEN OBTAINED. CROSSFIT IS NOT OBLIGATED TO CONTINUE THE MARKETING, ADVERTISING, PROMOTION, SALE, LICENSE, OPERATION, SUPPORT OR USE OF THE CROSSFIT WEBSITES, FITNESS PROGRAM, LICENSED SERVICES, LICENSED MARKS, AFFILIATE PROGRAM, CERTIFICATIONS, SEMINARS OR COURSES, CROSSFIT GAMES OR OTHER FITNESS OR SPORT RELATED EVENTS, SUBJECT MATTER EXPERT PROGRAM OR SEMINARS, RADIO PROGRAM, CROSSFIT JOURNAL OR CONTINUE THE USE OF ANY PARTICULAR ELEMENT OF ANY OF THE FOREGOING.

9. Limit on Liability

With respect to this Agreement, except in the case of Affiliate as set forth in Section 10 (Indemnification) and in the case of Affiliate a breach of Section 1.1 (grant and scope of license) or Section 8(a) (Affiliate representations and warranties), in no event shall CrossFit or Affiliate be liable to each other or any third party for any indirect, special or consequential damages including on account of expenditures, investments, leases or commitments made in connection with the activities or goodwill of either party, lost revenue, profits, lost data and the like arising out of or in connection with this Agreement or its termination, whether for breach of warranty or any obligation arising therefrom or otherwise, whether liability is asserted in contract or tort (including negligence and strict product liability), and irrespective of whether the parties have advised or been advised of the possibility of such losses or damages. THE TOTAL LIABILITY OF CROSSFIT SHALL BE LIMITED TO THE FEES PAID BY AFFILIATE TO CROSSFIT UNDER THIS AGREEMENT. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE FOREGOING LIMITATIONS ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES, AND IN THEIR ABSENCE THE ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

10. Indemnification

Affiliate shall indemnify, defend at CrossFit's request, and hold harmless CrossFit, and CrossFit's subsidiaries and affiliated entities, and each of their respective officers, affiliates, directors, agents and employees (collectively, a "**CrossFit Party**") from and against any and all actions, claims, liabilities, judgments, settlements, losses, damages, expenses, and costs (including court costs, expert witnesses and attorney's fees), arising from or related to any third party claim, suit or proceeding brought against any CrossFit Party which arises from or is related to: (a) Affiliate's breach or alleged breach of any of Affiliate's representations, warranties or covenants in this Agreement or breaching any of its obligations described herein (b) infringement or misappropriation by Affiliate of any intellectual property, personal or proprietary right of any third party; (c) property damage, personal injury or death based on Affiliate's negligence, recklessness, willful misconduct, acts or omissions; or (d) any other actions, claims, liabilities, losses, damages, expenses and costs arising out of Affiliate's operation of Affiliate's business or related to Affiliate's relationship with CrossFit. Affiliate may not settle any pending or threatened proceeding in a manner which admits wrongdoing by CrossFit and/or without obtaining an unconditional release of CrossFit from all such liability on claims that are the subject matter of such proceeding.

FOR UNIVERSITY/LEO/MUNICIPAL AFFILIATES ONLY: In the event the Affiliate enjoys some form of sovereign immunity and that does not extend to third parties, Affiliate shall provide the maximum indemnity possible to meet the requirements of this paragraph. This should not be construed in any way as a waiver of any sovereign immunity the Affiliate or entity may enjoy. Affiliate shall separately provide a copy of the terms of this indemnity to Affiliate Support.

11. Miscellaneous

11.1 Notices

Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (a) delivered in person; (b) sent by certified mail; or (c) sent by overnight or international courier, in each case properly posted and fully prepaid to the appropriate address set forth in the preamble to this Agreement. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service.

11.2 Waiver

Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

11.3 Severability

If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

11.4 Integration

This Agreement (including the Attachments and any addenda hereto signed by both parties) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. No terms, provisions or conditions of any purchase order, acknowledgement or other business form that either party may use in connection with the transactions contemplated by this Agreement will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of a receiving party to object to such terms, provisions or conditions. CrossFit may amend this Agreement at any time in its sole discretion. If and when the Agreement is renewed by the parties for a given Extended Term, such amendments shall be effective upon such renewal date.

11.5 Public Statements and Specific Limitations

This Agreement shall NOT entitle Affiliate to do any of the following:

- (a) Purport to speak on behalf of CrossFit, Inc. or for the organization as a whole;
- (b) Offer or grant certificates to trainers or certify trainers as CrossFit licensed trainers;
- (c) Speak to the media on CrossFit Inc.'s behalf without prior, specific, written authorization from CrossFit in each instance, which permission may be granted or withheld in CrossFit's sole and absolute discretion;
- (d) Publish a work about CrossFit or on CrossFit's behalf without prior, specific, written authorization;
- (e) Use the CrossFit name, any CrossFit trademark, trade name, service mark or logo or Licensed Marks to promote a product, good or service.

11.6 Governing Law and Choice of Forum

This Agreement will be interpreted and construed in accordance with the laws of the State of Arizona and the United States of America, without regard to conflict of law principles. All disputes arising out of this Agreement will be subject to the exclusive jurisdiction of the state courts located in Phoenix, Arizona, and the federal courts located there also, and each party hereby consents to the personal jurisdiction thereof. The parties will not raise in connection therewith, and hereby waive, any defenses based upon the venue, the inconvenience of the forum, the lack of personal jurisdiction, the sufficiency of service of process or the like in any such action or suit brought in the State of Arizona.

FOR UNIVERSITY/LEO/MUNICIPAL AFFILIATES ONLY: With regard to choice of law provisions stated above, if necessary for the Affiliate's legal obligations, this agreement will be construed in accordance with the laws of the State/Commonwealth in which the Affiliate (i.e. Municipality, University, Base. Etc.) exists and conducts training, and the United States of America.

11.7 Equitable Relief

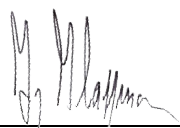
Affiliate acknowledges and agrees that any breach of its obligations under this Agreement will result in irreparable harm to CrossFit, the extent of which would be difficult to ascertain and for which cannot be reasonably or adequately compensated in damages. Accordingly, Affiliate agrees that, in addition to any other remedies to which CrossFit may be entitled, in the event of a breach by Affiliate or any of its employees or subcontractors of this Agreement, CrossFit will be entitled to seek injunctive and/or equitable relief to prevent a breach

or threatened breach of any or all of the provisions of this Agreement and to secure enforcement thereof, in addition to any other relief or award to which CrossFit may be entitled.

In Witness Whereof, the parties have executed this Agreement as of the date first above written.

CrossFit, Inc.:

Affiliate:

By:  _____

By: Mikki Lee Martin _____
Mikki Lee Martin (Nov 13, 2012)

Name: Greg Glassman

Name: Mikki Martin

Title: CEO, CrossFit Inc.

Title: _____