

1 Christian W. Liedtke (SBN 297523)
2 cw.liedtke@acuminis.biz
3 acuminis
4 3420 Bristol Street, 6th Floor
5 Costa Mesa, CA 92626
6 Phone: (949) 698-7840
7 Facsimile: (949) 698-7861

8
9 Attorney for Plaintiff,
10 Yeti Data, Inc.

11
12 UNITED STATES DISTRICT COURT
13
14 CENTRAL DISTRICT OF CALIFORNIA

15 Yeti Data, Inc., a Delaware Corporation,
16
17 Plaintiff,

18 v.

19 Snowflake, Inc. f/k/a Snowflake
20 Computing, Inc., a Delaware Corporation,
21
22 Defendant.

No. _____

**COMPLAINT FOR FALSE DESIGNATION
OF ORIGIN, FEDERAL TRADEMARK
INFRINGEMENT AND UNFAIR
COMPETITION, COMMON LAW
TRADEMARK INFRINGEMENT, COMMON
LAW UNFAIR COMPETITION, STATE
UNFAIR AND DECEPTIVE TRADE
PRACTICES, VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE § 17500
et. seq., UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

23 Plaintiff Yeti Data, Inc. (“Plaintiff” or “Yeti Data”) by and through its undersigned
24 counsel, for its Complaint, hereby states and alleges against Defendant Snowflake, Inc. f/k/a
25 Snowflake Computing, Inc. (“Defendant”) as follows:

26 **NATURE OF THE CASE**

27 1. Yeti Data’s claims arise from Defendant’s willful and blatant infringement of Yeti
28 Data’s federally registered YETI SNOWFLAKE mark, which it uses to brand its big data and

1 consumer data management solutions, and data analytics software. Defendant's unlawful acts are
2 overt, opportunistic and willful attempts to cash in on and usurp the goodwill and value of Yeti
3 Data's YETI SNOWFLAKE mark.

4 2. For more than half a decade, Yeti Data has, with consistent and earnest effort,
5 marketed and publicized its YETI SNOWFLAKE mark. Yeti Data's YETI SNOWFLAKE
6 technology solutions are much loved by executives from client organizations around the world.

7 3. Defendant never approached Yeti Data for a license or other kind of permission to
8 use any of Yeti Data's trademarks.

9 4. Defendant's use of the infringing SNOWFLAKE mark on the identical type of
10 products and services is likely to deceive consumers into believing that Defendant's products
11 come from the same source and are of the same quality as those of Yeti Data, when they are not.
12 Given Defendant's aggressive and widespread marketing campaign, reverse confusion, i.e. the
13 mistaken belief of consumers that Plaintiff is in fact infringing Defendant's purported trademarks
14 or is somehow authorized by or affiliated with Defendant is also likely. Defendant's deceptive
15 and infringing conduct further threatens the valuable goodwill Yeti Data developed in its marks
16 by depriving Yeti Data of its right to control the reputation of products bearing its mark.

17 5. Yeti Data hoped to resolve this matter amicably, without resorting to this Court.
18 However, per its response to Yeti Data's cease and desist letter Defendant outright refused to
19 engage in any dialogue that could lead to an amicable resolution. Thus, Yeti Data is left with no
20 choice but to bring this suit.

21 6. Defendant's inequitable conduct has and continues to cause confusion to the public
22 and injury to Yeti Data. Yeti Data cannot stand by as Defendant willfully violates its YETI
23 SNOWFLAKE mark. Defendant's campaign of illegal practices will continue unless and until
24 this Court ends it. Therefore, Yeti Data seeks (a) injunctive relief to stop Defendant's deceptive
25 and infringing activity and (b) monetary relief to divest Defendant of its appropriated sales and
26 compensate Yeti Data for the harm suffered as a result of Defendant's actions.

27 **JURISDICTION**

28 7. This is an action for: (a) false designation of origin and unfair competition arising

1 under 15 U.S.C. § 1125(a); (b) trademark infringement arising under 15 U.S.C. § 1114; (c) unfair
2 competition arising under state law including the California Business & Professions Code §
3 17200 *et seq.*; (d) trademark infringement arising under the common law of the State of
4 California; (e) common law unfair competition; (f) violation of California Business & Professions
5 Code § 17500; and (g) unjust enrichment.

6 8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal
7 question jurisdiction); 28 U.S.C. § 1338 (a) and (b) (a state law claim of unfair competition joined
8 with a substantial and related claim under federal trademark laws), 28 U.S.C. § 1367
9 (supplemental jurisdiction because Yeti Data's state law claims are substantially related to Yeti
10 Data's federal claims), and the doctrines of ancillary and pendant jurisdiction.

11 9. This Court has personal jurisdiction over Defendant because on information and
12 belief, Snowflake, Inc. is a California citizen. Snowflake, Inc. has purposefully availed itself of
13 the privilege of conducting business in the State of California, including but not limited to by
14 registering with the California Secretary of State as a foreign corporation. Moreover, Defendant
15 has had, and continues to have, regular and systematic contacts with the State of California and
16 this judicial district. On information and belief, Defendant has conducted, and continues to
17 conduct, business within the State of California and within this judicial district. Furthermore,
18 Defendant has committed acts of trademark infringement, false designation of origin, federal and
19 state unfair competition, and violations of California Business & Professions Code § 17500
20 giving rise to this action in the State of California and within this judicial district. On information
21 and belief, Defendant has, and continues to, advertise, promote, offer for sale, and sell products
22 and services bearing the infringing SNOWFLAKE mark in the State of California and within this
23 judicial district. Moreover, Defendant knew and knows that its infringement would harm Yeti
24 Data, which Defendant knows is headquartered in California.

25 10. This Court also has personal jurisdiction over Defendant based on Cal. Civ. Proc.
26 Code § 410.10. On information and belief, Defendant has (a) continuously and systematically
27 solicited business in the State of California and within this judicial district; (b) have transacted
28 and done substantial business in the State of California and within this judicial district; (c) have

1 wrongfully and willfully caused injury to Yeti Data in the State of California and within this
2 judicial district, and said injury was reasonably foreseeable.

3
4 **VENUE**

5 11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 (b), (c), and
6 (d) at least because this Court has personal jurisdiction over each of the parties as alleged
7 throughout this Complaint and because, on information and belief, Defendant conducts
8 substantial business directly and/or through third parties or agents in this judicial district by
9 selling and/or offering infringing products and services for sale, and/or by conducting other
10 business, in this judicial district.

11 **THE PARTIES**

12 12. Plaintiff Yeti Data is a Delaware corporation registered as a foreign business entity
13 with the California Secretary of State. Yeti Data is, and at all relevant times was, engaged in the
14 business of, amongst others, creating, distributing and marketing big data and consumer data
15 management solutions, and data analytics software of the highest quality.

16 13. On information and belief, Defendant Snowflake, Inc., f/k/a Snowflake
17 Computing, Inc., is a limited liability company incorporated under the laws of Delaware, with its
18 principal place of business 450 Concar Drive, San Mateo, CA 94402. Based on Defendant's
19 Statement of Information filed with the California Secretary of State on July 25, 2019, Defendant,
20 like Plaintiff, is engaged in "DATA ANALYTIC SOFTWARE SALES". (Exhibit 1) In its
21 previous California SOS filing Defendant's business was identified as "SAAS OF CLOUD
22 DATA WAREHOUSING". (Exhibit 2)

23 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

24 **I. Yeti Data's Business and Trademarks**

25 14. In or around 2012 – 2013 Yeti Data was born when a group of veteran executives
26 with experience gained at such powerhouse institutions as SAP, IBM, SAS, and McKinsey &
27 Company came together to create a sophisticated answer to the big data management conundrum.

28 15. Also around that time, the team conceived of its SNOWFLAKE branding to

1 identify and distinguish its unique IT solutions.

2 16. In addition to its strong trademark rights at common law, Yeti Data applied for a
3 respective trademark registration with the United States Patent and Trademark Office (USPTO) to
4 protect its rights.

5 17. When the trademark application was published for opposition, no entity or person,
6 including Defendant, opposed it.

7 18. In recognition of the distinctiveness of the YETI SNOWFLAKE mark, the USPTO
8 issued Registration No. 5,500,123 (the “‘123 Registration”) in International Class 9 for
9 “[c]omputer software for advertising, marketing, and commercial transaction data management
10 and analytics.” The ‘123 registration as issued by the USPTO recognizes Yeti Data’s first use
11 dates of May 1, 2014 which predates any first used dates alleged by Defendant. A copy of the
12 ‘123 registration is attached as Exhibit 3.

13 19. Yeti Data also owns a trademark registration for its SNOWFLAKE mark covering
14 all 27 EU Member States and the United Kingdom. A copy Yeti Data’s EU SNOWFLAKE
15 trademark registration is attached as Exhibit 4. No one including Defendant opposed Yeti Data’s
16 EU trademark registration for SNOWFLAKE.

17 20. Furthermore, Yeti Data obtained U.S. Trademark Registration No. 5,510,650 (the
18 “‘650 Registration’) in International Class 9 for “[c]omputer software for advertising, marketing,
19 and commercial transaction data management and analytics.” The ‘650 registration as issued by
20 the USPTO recognizes Yeti Data’s first use dates of May 1, 2014 which predates any first used
21 dates alleged by Defendant. A copy of the ‘650 registration is attached as Exhibit 5. Like the ‘123
22 and EU Registrations, the ‘650 Registration was not opposed by anyone including Defendant.

23 21. For more than half a decade, Yeti Data has devoted extensive time and effort to
24 building and promoting its valuable trademarks and has continuously used them in connection
25 with its cutting edge IT solutions.

26 22. Shown below are true and accurate representative illustrations of just a few of Yeti
27 Data’s use of its SNOWFLAKE marks in presentations, on websites, and in brochures:
28

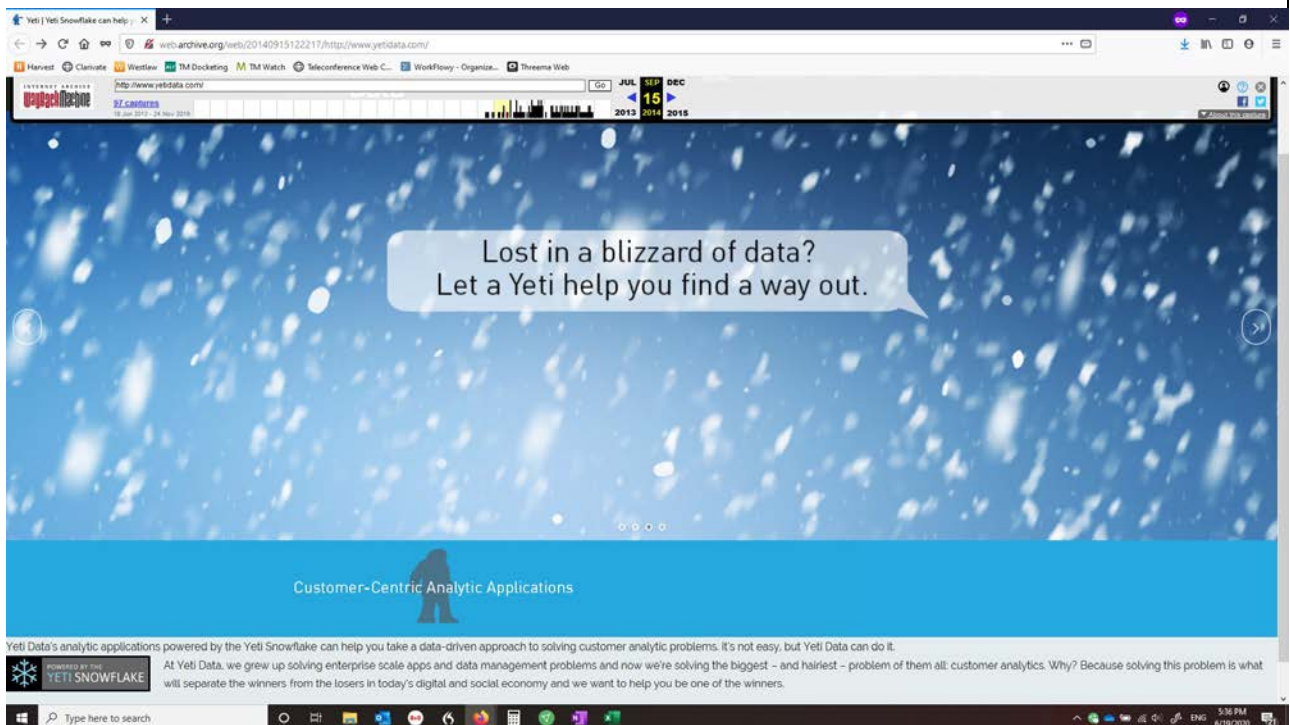
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Powered by the most powerful customer solution, the Yeti Snowflake™

- We put your customer at the center of the data that you collect
- Full security, data governance, customer preferences
- Social, Mobile, and Channel touch-points
- Customer Journey Analytics



©2014 Yeti Data, Inc.



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

+Yeti Data

A marketer's best-IT friend

Yeti Data presents a remarkable new marketing service- the Private Data Exchange. The Yeti Data Private Data Exchange service gives clients a cloud-based service to check-in, analyze and synthesize raw data into strategic marketing information for use in marketing innovation initiatives. The Yeti Data Exchange is designed with a focus on helping clients tap all of their dark internal data and enriching this with 3rd party reference data, and unstructured social media data to build the richest customer profiles possible.

Yeti calls this "snowflaking" the customer data. The snowflake begins with the purest crystal of internal customer data and begins branching out from there as each successive customer data point is matched to the record building out a complete snowflake profile on the customer. The result is a very rich data profile that goes way beyond the traditional demographics including behavioral and psychographic elements. These rich customer snowflakes can be used for:

Dynamic Customer Segmentation: segment using social and behavioral data, iteratively and rapidly not just once a year.

Tailored User Experiences: personalize the customer user experience across all channels, triangulating preferences and intuiting channel affinities.

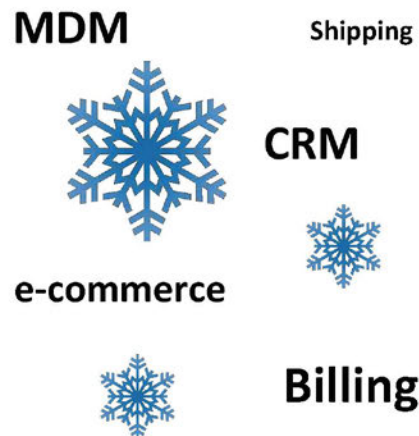
Loyalty Marketing: Customize products & services more accurately, support richer customer mobile apps

Increase Conversion: Enrich leads with social & 3rd party data for better offer targeting, driving more efficient customer journey.

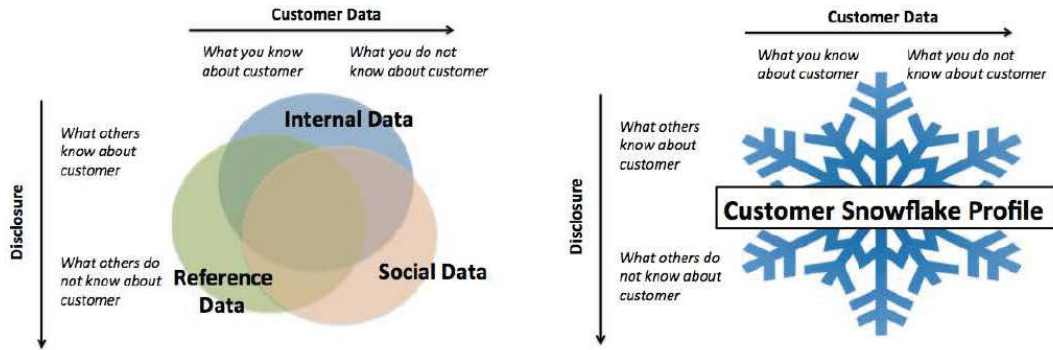
Channel Loyalty Intensity: Understand partner share of practice, overall performance capacity, and suss out portfolio selling opportunities.

Couponing & Promotions: Real-time recognition and reward of customer behavior, better targeted coupons based on life-style and social profiles.

Why the Private Data Exchange?



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



How Yeti Snowflake works:

Correlating internal, reference and social data into customer snowflakes

Simply put Yeti Data allows marketers to get more out of their customer data by correlating all of the disparate and conflicting data into one Customer Snowflake Profile. Marketers can manage and analyze their customer data simultaneously, combining data one way, then another in order to look at different perspectives in the data.

Traditional data management solutions

merge all the data together clipping off overlapping, conflicting data points.

With the Yeti Data “snowflaking” approach marketers lose none of the richness of their customer data that’s hidden in overlapping details. They can analyze conflicts in the data and make decisions about the overall synthesis into information based on discerning the context of conflicting data points.

1 23. The '123 registration constitutes *prima facie* evidence of Yeti Data's exclusive
2 right to use and ownership of the YETI SNOWFLAKE mark in connection with the goods and
3 services identified in the registration.

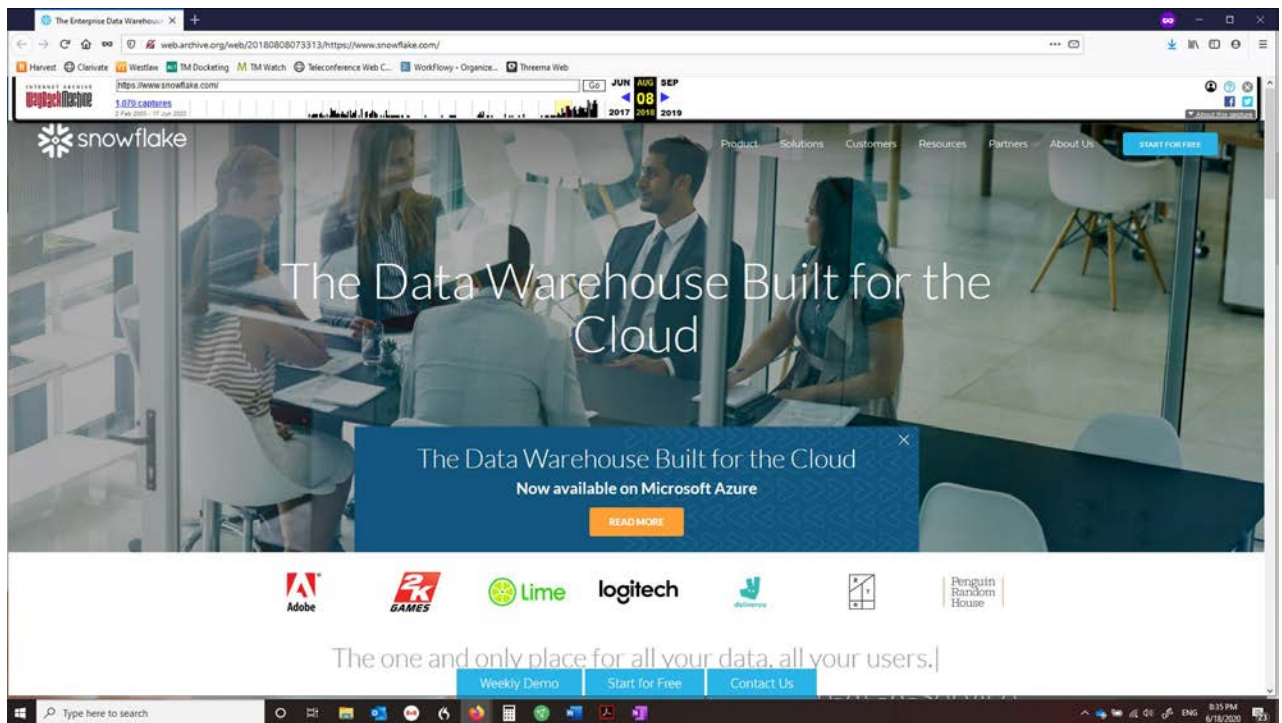
4 **II. Defendant's Wrongful Acts**

5 24. On information and belief, Defendant began its operations after Yeti Data.

6 25. Apparently unable to conceive of a mark as innovative as Yeti Data's marks,
7 Defendant decided to compete unfairly against Yeti Data by engaging in the unlawful, deceptive,
8 and inequitable activities described herein, to profit from the goodwill and recognition associated
9 with the Yeti Data's valuable trademarks.

10 26. On information and belief, Defendant did not acquire the www.snowflake.com
11 domain until years after Yeti Data filed its trademark application and years after Yeti Data began
12 using its valuable trademarks.

13 27. In fact, the Internet Archive suggests that Defendant did not begin using the
14 infringing www.snowflake.com domain until August 2018 – four years after Yeti Data sought
15 registered protection of its valuable trademark:

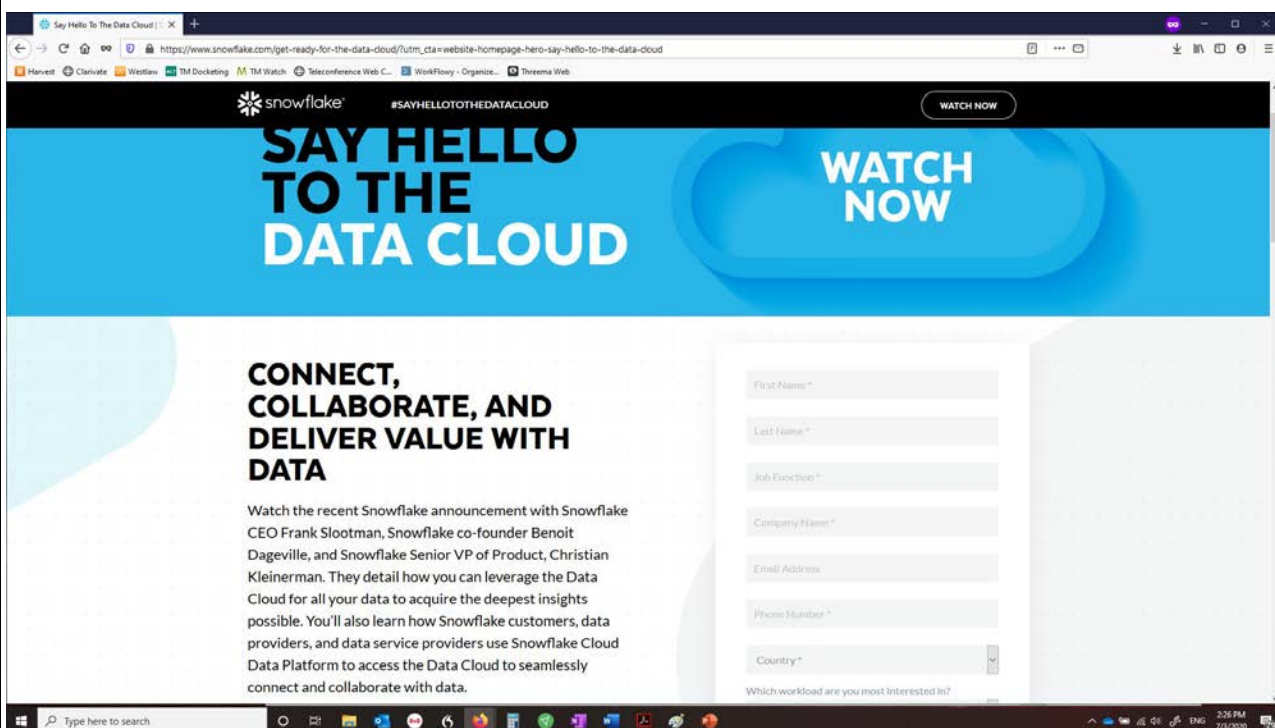


1 28. On information and belief, as indicated in its filings with the California Secretary
 2 of State, until January 22, 2019, Defendant defined its business as “SAAS OF CLOUD DATA
 3 WAREHOUSING”. A copy of the respective filing is attached as Exhibit 2.

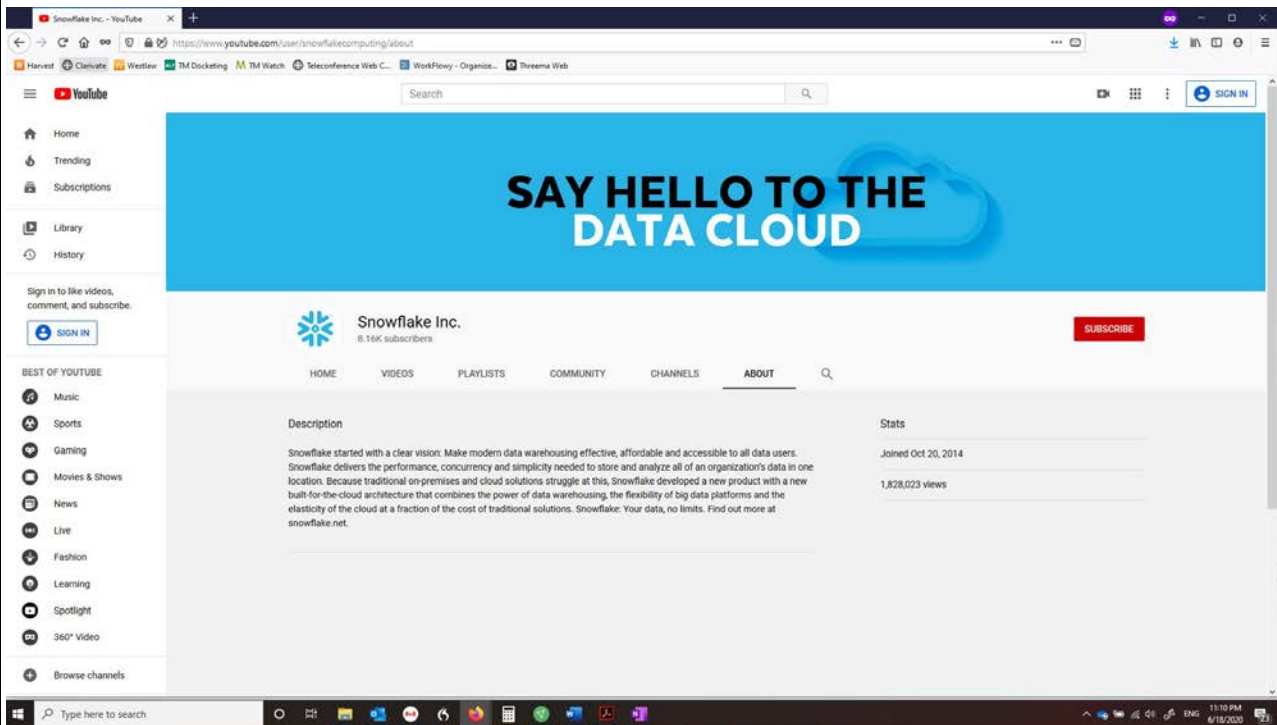
4 29. On information and belief, as indicated in its filings with the California Secretary
 5 of State, it was not until July 25, 2019 that Defendant re-defined its business as “DATA
 6 ANALYTIC SOFTWARE SALES” thus offering products and services identical to those rendered
 7 by Yeti Data under highly confusingly similar trademarks to Yeti Data’s YETI SNOWFLAKE
 8 and SNOWFLAKE marks. A copy of the respective filing is attached as Exhibit 1.

9 30. Defendant’s progressive encroachment was further illustrated in a June 18, 2020
 10 webinar by industry analyst firm Gartner. In that webinar the analyst explained that if Defendant
 11 starts to position itself as an enterprise data platform, which its, it is a logical next step that
 12 Defendant would expand beyond the core of warehousing components to encompass both data
 13 analytics and even operational offerings.

14 31. Representative examples of Defendant’s encroaching and infringing use of Yeti
 15 Data’s valuable trademarks for products and services identical or highly similar to those rendered
 16 by Yeti Data and identified in its trademark registrations are shown below:



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



1 32. On information and belief, Defendant's infringing products and services are
2 marketed in the same channels of trade as Yeti Data's original products and services and sold
3 nationwide and internationally to the same types of customers that would purchase Yeti Data's
4 original services.

5 33. In fact, Defendant promotes their infringing products and services in such an
6 extensive way that it has begun to or is about to saturate the market with publicity for their
7 products and services bearing the infringing SNOWFLAKE mark. This is likely to cause
8 purchasers of Yeti Data's products and services to believe that they originates from or is affiliated
9 with Defendant; or worse cause the mistaken belief among consumers that Yeti Data is infringing
10 Defendant's purported mark even though Defendant is the junior user.

11 34. Defendant's use of a highly confusingly similar mark to the ones owned by Yeti
12 Data, a known competitor, on products identical or at least highly similar to those of Yeti Data,
13 marketed and sold in the same channels of trade, is likely to cause consumers to be confused as to
14 whether Yeti Data is the source or sponsor of, or is otherwise affiliated with Defendant or
15 Defendant's products.

16 35. On information and belief, Defendant's unauthorized use of the infringing
17 SNOWFLAKE mark is an attempt to falsely associate Defendant's products and services with
18 Yeti Data or to otherwise trade upon Yeti Data's valuable reputation and good will in its YETI
19 marks.

20 36. Yeti Data is informed and believes, and on that basis alleges, that Defendant's use
21 of the infringing SNOWFLAKE mark is designed and intended to cause consumer confusion,
22 mistake or deception as to the source of Defendant's products.

23 37. Yeti Data is informed and believes, and on that basis alleges, that it is Defendant's
24 intention to cause consumers including prospective customers to believe that Defendant's
25 products and services are associated with Yeti Data or its valuable marks.

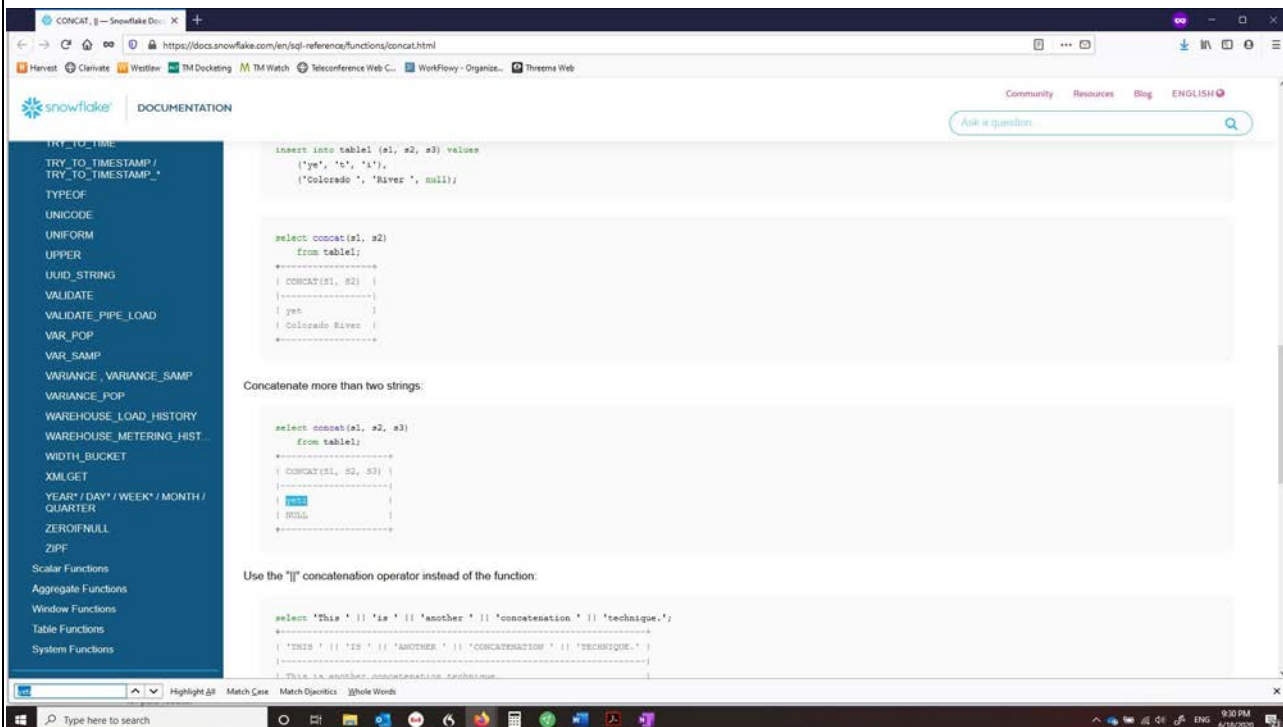
26 38. At no point in time has Yeti Data ever given Defendant a license, permission or
27 authority to use and/or display the infringing SNOWFLAKE mark in connection with any of
28 Defendant's products or services.

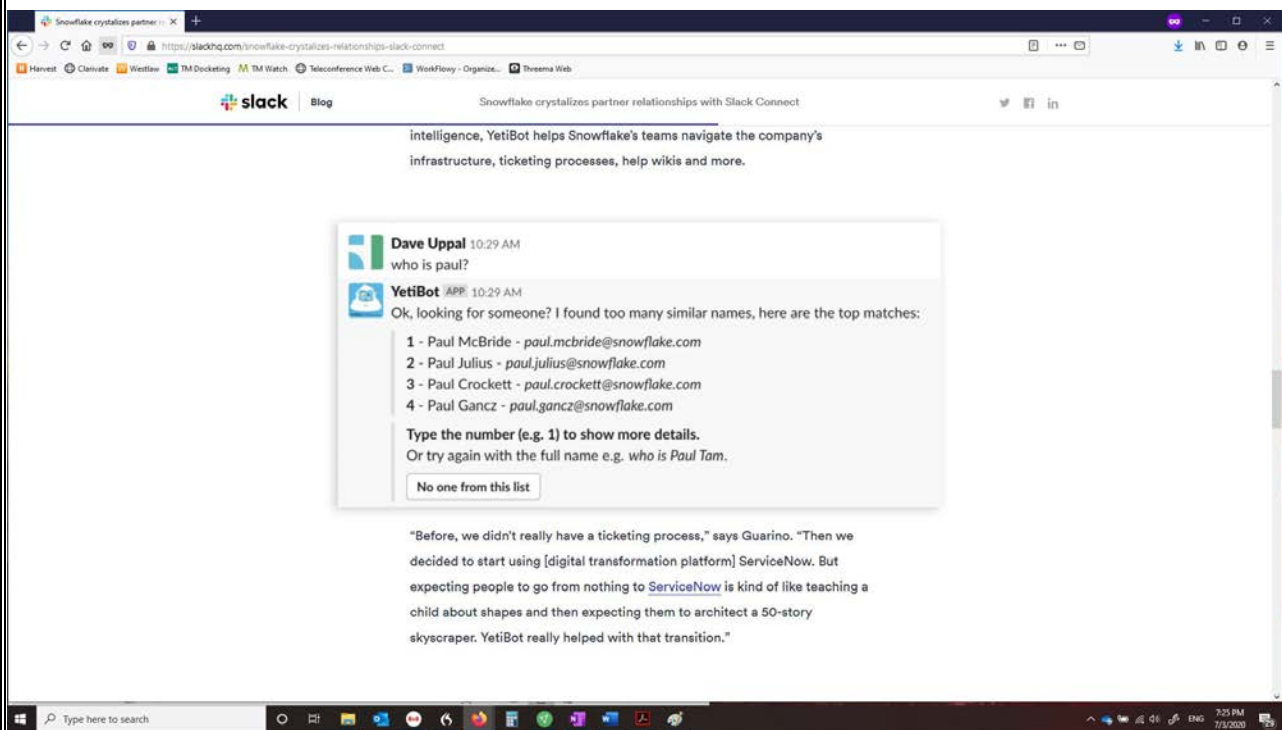
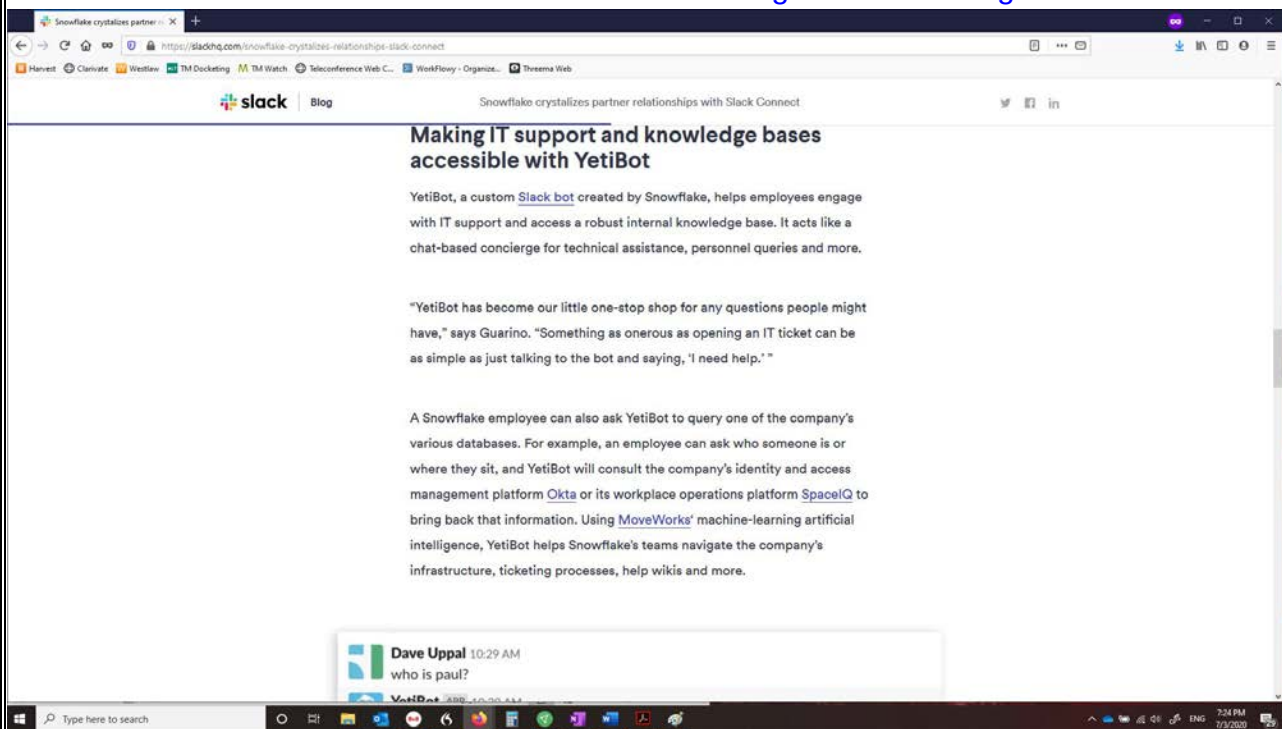
1 39. Without permission or consent from Yeti Data, Defendant has infringed Yeti
 2 Data’s valuable marks in commerce by promoting, advertising, selling, and/or offering for sale
 3 identical or highly similar IT products and services unlawfully bearing marks highly confusingly
 4 similar to Yeti Data’s valuable marks.

5 40. On information and belief, Defendant, fueled by their superior financial position
 6 and barefaced ability to outmuscle Yeti Data, saw an opportunity to trade off the good will Yeti
 7 Data created in its valuable marks.

8 41. To add insult to injury, Defendant seems to have set out to totally usurp Yeti
 9 Data’s brand equity by not only infringing Yeti Data’s rights in its SNOWFLAKE trademarks but
 10 by infringing Yeti Data’s valuable company name and its YETI related trademarks.

11 42. Depicted below are examples of Defendant’s unauthorized use of Yeti Data’s
 12 YETI marks:





43. Full printouts concerning the infringing YETI uses depicted above are attached hereto as Exhibit 6 and Exhibit 7.

44. On information and belief, Defendant’s infringement of Yeti Data’s valuable trademarks is no isolated incident. Rather, Defendant applies a laissez faire approach when it comes to the intellectual property rights of others.

45. On information and belief Defendant even appears to attempt to free-ride on the

1 goodwill of the AMAZON and AWS trademarks by purchasing AMAZON SNOWFLAKE and
 2 AWS as keywords in its SEO advertising efforts.

3 46. An Excerpt from a respective WordStream analysis is depicted below. The full
 4 WordStream report is attached hereto as Exhibit 8.

WordStream Free Keyword Tool https://app.wordstream.com/flt/app:

snowflake sql	➤
snowflake san mateo	➤
snowflake training	➤
snowjapan	➤
snowflake technology	➤
what is snowflake database	➤
hadoop data lake	➤
amazon snowflake	➤
warehouse prices	➤
snowflake analytics	➤

Put your keywords to work!

Showing 25 of 500 keywords for snowflake.com EMAIL ALL MY KEYWORDS

Keywords	Search volume	CPC	Competition	Search volume	CPC	Competition
snowflake	450,000	\$1.46	High	9,440	\$0.05	High
snowflake computing	5,400	\$2.31	High	180	\$2.25	Medium
snowflake data warehouse	2,900	\$6.17	High	230	\$6.90	High
snowflake database	2,900	\$3.77	High	180	\$0.05	High
snowflake software	1,900	\$1.70	High	120	\$0.05	Low
aws snowflake	1,900	\$3.28	High	110	\$0.05	Low

EMAIL ALL MY KEYWORDS

1 **III. Defendant Refuses to Cease Infringing Yeti Data’s Trademarks**

2 47. On June 11, 2020, Yeti Data sent Defendant a letter requesting that it cease its use
3 of the infringing SNOWFLAKE mark and inviting Defendant to enter into discussions to explore
4 an amicable resolution of this matter. A copy of this letter is attached hereto as Exhibit 9.

5 48. On June 19, 2020, Defendant responded. Aside from containing a number of
6 baseless allegations Defendant’s response is best summarized by the final sentence of its
7 response: “We trust that this letter will put an end to Yeti Data’s meritless claims against
8 Snowflake.” A copy of this letter is attached hereto as Exhibit 10.

9 49. Yeti Data subsequently sent Defendant a draft of this Complaint before filing it
10 with the Court in a further attempt to resolve this matter without burdening the Court but to no
11 avail.

12 50. In light of Defendant’s unwillingness to even explore an amicable resolution, Yeti
13 Data was left with no choice but to resort to this Court.

14 **IV. Injury to Yeti Data**

15 51. Because Yeti Data has no control over the quality of Defendants’ infringing
16 products and services, or the marketing campaign that promotes Defendants’ infringing products
17 and services, Defendant’s infringing use of the infringing SNOWFLAKE mark results in Yeti
18 Data’s loss of control of its business reputation and good will.

19 52. Additionally, as discussed above, Defendant’s continued substantial marketing
20 campaign is so saturating the market with Defendant’s infringing mark, that consumers will
21 erroneously believe that Yeti Data’s products and services emanate from Defendant or an entity
22 affiliated with or sponsored by Defendant. Furthermore, as part of this reverse confusion,
23 consumers will, and in fact already have, erroneously believe that Yeti Data is the unauthorized
24 infringer of Defendant’s purported SNOWFLAKE mark, causing injury to Yeti Data’s reputation
25 and goodwill in its business and valuable marks.

26 53. Defendant’s unauthorized use of the infringing SNOWFLAKE mark has and will
27 continue to have adverse effects on the value and distinctive quality of Yeti Data’s valuable
28 marks including, but not limited to, the marks’ identity-evoking quality by lessening their

1 capacity to identify and distinguish Yeti Data as the exclusive source of YETI SNOWFLAKE
2 marked products and services.

3 54. Since Yeti Data owns all rights in the YETI SNOWFLAKE mark, Defendant's use
4 of the mark is illegal, flagrant, and unabashed. Defendant's use of the infringing SNOWFLAKE
5 mark is in bad faith and evidences Defendant's intent to deceive and mislead consumers into
6 believing that Defendant's products and services are sponsored, licensed, authorized by,
7 connected, affiliated, or otherwise associated with Yeti Data and its valuable trademarks.

8 55. Yeti Data has sustained and will continue to sustain damages as a result of
9 Defendant's wrongful acts.

10 56. On information and belief, unless enjoined by this Court, Defendant intends to
11 continue to infringe Yeti Data's marks and otherwise profit from the good will attributable to the
12 marks. Yeti Data has no adequate remedy at law to redress all of the injuries Defendant has
13 caused and intends to cause. Hence, Yeti Data will continue to suffer irreparable injury, harm, and
14 damage and sustain lost profits as a direct and proximate result of Defendant's wrongful acts
15 alleged above, unless and until Defendant's actions alleged herein are enjoined by this Court.

16 57. Furthermore, as discussed above, Defendant receives substantial revenue in
17 connection with their marketing, distribution, and sale of their infringing products and services.
18 On information and belief, Defendant's willful infringement of Yeti Data's marks diverts sales
19 from Yeti Data to Defendant and thereby robs Yeti Data of revenue and profit that would
20 rightfully be its own. Therefore, Yeti Data is entitled to damages in an amount to be determined at
21 trial.

22 CAUSES OF ACTION

23 COUNT I

24 **[False Designation of Origin and Unfair Competition (15 U.S.C. § 1125(a))]**

25 58. Yeti Data repeats and realleges each and every allegation in paragraphs 1-56 of
26 this Complaint as though fully set forth herein.

27 59. Defendant makes, distributes, uses, imports, offers to sell, and sells in the U.S.
28 products and services with branding that directly infringes Yeti Data's valuable marks in violation

1 of 15 U.S.C. § 1125(a).

2 60. The use of the SNOWFLAKE mark by Defendant constitutes a false indication of
3 origin, affiliation and/or sponsorship, and a false description or representation that wrongfully and
4 falsely designates Defendant's products as originating from Yeti Data, and being associated,
5 affiliated or connected with, approved or sponsored by Yeti Data. Furthermore, as Defendant, the
6 junior user, continues its substantial marketing campaign, the relevant public is likely to
7 mistakenly believe that Yeti Data's use of its marks originates from, or is associated, affiliated or
8 connected with, or approved or sponsored by Defendant.

9 61. As a direct and proximate result of Defendant's wrongful acts, Yeti Data has
10 suffered and continues to suffer and/or is likely to suffer damage to its trademark, business
11 reputation, and goodwill. Defendant will continue to use, unless restrained, its infringing mark,
12 name, or other marks, and names confusingly similar to or colorable imitations of Yeti Data's
13 marks and will cause irreparable damage to Yeti Data. Yeti Data has no adequate remedy at law
14 and is entitled to an injunction restraining Defendant, their officers, agents, and employees, and
15 all persons acting in concert with Defendant, from engaging in further acts of false designation of
16 origin, affiliation or sponsorship. Yeti Data is entitled to said injunctive relief based on 15 U.S.C.
17 §1116.

18 62. Furthermore, Yeti Data is entitled to recover from Defendant the actual damages
19 that it sustained and/or is likely to sustain as a result of Defendant's wrongful acts. Yeti Data is
20 presently unable to ascertain the full extent of the monetary damages that it has suffered and/or is
21 likely to suffer by reason of Defendant's acts of false designation of origin, affiliation or
22 endorsement.

23 63. Yeti Data is also entitled to recover from Defendant the gains, profits, and
24 advantages that Defendant has obtained as a result of their wrongful acts as well as business
25 opportunities received from Defendant's wrongful acts. Yeti Data is presently unable to ascertain
26 the extent of the gains, profits, and advantages as well as business opportunities Defendant has
27 realized by reason of their acts of false designation of origin, affiliation or endorsement.

28 64. Since Defendant's use of the infringing SNOWFLAKE mark has been and

1 continues to be intentional, deliberate, willful, and in bad faith, Yeti Data is entitled to damages
2 pursuant to 15 U.S.C. §1117, including, but not limited to, the costs of this action as well as
3 reasonable attorney's fees and costs.

4 **COUNT II**

5 **[Trademark Infringement (15 U.S.C. § 1114)]**

6 65. Yeti Data repeats and realleges each and every allegation in paragraphs 1-63 of
7 this Complaint as though fully set forth herein.

8 66. Yeti Data owns valid and enforceable registered trademark rights (No. 5,500,123)
9 for its YETI SNOWFLAKE mark.

10 67. Without permission or consent of Yeti Data, Defendant has used and continues to
11 use in commerce reproductions, copies or colorable imitations of Yeti Data's YETI
12 SNOWFLAKE mark in connection with distributing, selling, offering for sale, advertising, and/or
13 promotion of Defendant's goods and services.

14 68. Without permission of Yeti Data, Defendant is reproducing, copying, or colorably
15 imitating Yeti Data's YETI SNOWFLAKE mark and applying such reproductions, copies, and
16 colorable imitations to merchandise, labels, signs, packages, or advertisements intended to be
17 used in commerce upon or in connection with distributing, selling, offering for sale, advertising
18 and/or the promotion of goods and services on or in connection with which such use has already
19 caused confusion or mistake, and is likely to continue to cause confusion, or to cause mistake, or
20 to deceive.

21 69. Yeti Data is informed and believes, and alleges on that basis, that the activities of
22 Defendant complained of herein constitute willful and intentional infringements of Yeti Data's
23 YETI SNOWFLAKE mark, and that Defendant did so with the intent to unfairly compete against
24 Yeti Data, to trade upon Yeti Data's reputation and goodwill by causing confusion and mistake
25 among customers and the public, and to deceive the public into believing that Defendant's goods
26 and services are associated with, sponsored by, originate from, or are approved by Yeti Data,
27 when in reality and truth and fact they are not.

28 70. Defendant's extensive use of the infringing SNOWFLAKE mark in the United

1 States and internationally is further likely to confuse consumers and create the misimpression that
2 products and services bearing Yeti Data's marks are affiliated with Defendant such that Yeti
3 Data's reputation will be injured and the good will built in its marks will be impaired.

4 71. Yeti Data is informed and believes, and on that basis alleges, that Defendant had
5 actual knowledge of Yeti Data's ownership and prior use of its YETI SNOWFLAKE mark, and
6 without the consent of Yeti Data, has willfully violated 15 U.S.C. § 1114.

7 72. The aforesaid acts of the Defendant have been intentional, deliberate, willful, and
8 in bad faith.

9 73. Defendant's aforesaid acts have caused, are causing, and will continue to cause,
10 great and irreparable injury to Yeti Data and unless enjoined by this Court, said irreparable injury
11 will continue. Therefore, Yeti Data is entitled to injunctive relief pursuant to 15 U.S.C. § 1116,
12 damages pursuant 15 U.S.C. § 1117(a), including Defendant's profits, and/or California Brewing
13 Companies actual damages and/or the cost of this action. Yeti Data is further entitled to
14 reasonable attorneys' fees and costs because of Defendant's conduct.

15 **COUNT III**

16 **[Trademark Infringement Under the Common Law of the State of California]**

17 74. Yeti Data repeats and realleges each and every allegation in paragraphs 1-72 of
18 this Complaint as though fully set forth herein.

19 75. As shown above, Yeti Data has a protectable interest in the YETI SNOWFLAKE
20 mark.

21 76. Defendant's use of the infringing SNOWFLAKE mark is likely to cause consumer
22 confusion as to whether Defendant's products originate from Yeti Data, or are associated,
23 affiliated or connected with or approved or sponsored by Yeti Data.

24 77. Defendant's use of the infringing SNOWFLAKE mark and promotion of the same
25 in an aggressive market saturating marketing campaign is likely to cause consumer confusion as
26 to whether Yeti Data's products in fact originate from Defendant, infringe Defendant's purported
27 rights, or are associated, affiliated or connected with or approved or sponsored by Defendant.

28 78. The aforesaid acts of Defendant have caused, and are causing, great monetary

1 harm to Yeti Data. Yeti Data is entitled to recover from Defendant the actual damages that it
2 sustained and/or is likely to sustain as a result of Defendant's wrongful acts. Yeti Data is
3 presently unable to ascertain the full extent of the monetary damages that it has suffered and/or is
4 likely to sustain by reason of Defendant's acts of trademark infringement.

5 79. Defendant's willful acts of trademark infringement and unfair competition under
6 California common-law constitute fraud, oppression and malice. Accordingly, Yeti Data is
7 entitled to exemplary damages.

8 80. Furthermore, as a direct and proximate result of Defendant's wrongful acts, Yeti
9 Data has suffered and continues to suffer and/or is likely to suffer damage to its business
10 reputation and goodwill. Defendant will continue to infringe, unless restrained by this Court, Yeti
11 Data's valuable marks or other marks confusingly similar to the Yeti Data's marks and will cause
12 irreparable damage to Yeti Data. Plaintiff has no adequate remedy at law and is entitled to an
13 injunction restraining Defendant, their officers, agents, and employees, and all persons acting in
14 concert with Defendant, from engaging in further uses of the infringing SNOWFLAKE mark or
15 any confusingly similar variations thereof.

16 **COUNT IV**

17 **[State Unfair Competition and State Unfair and Deceptive Trade Practices]**

18 81. Yeti Data repeats and realleges each and every allegation in paragraphs 1-80 of
19 this Complaint as though fully set forth herein.

20 82. Defendant has been, and is, engaged in unlawful, unfair and/or fraudulent business
21 practices in violation of §17200 *et seq.* of the California Business & Professional Code. Amongst
22 others, Defendant has been and is passing off their goods as those of Yeti Data, causing a
23 likelihood of confusion or the likelihood of misunderstanding as to the source, sponsorship, or
24 approval of Defendant's products and services and/or as to Defendant's affiliation, connection, or
25 association with Yeti Data, and/or otherwise damaging the public.

26 83. Defendant's actions, as complained of herein, have been and will continue to be
27 willful and intentional. Defendant's conduct constitutes unfair and deceptive acts or practices in
28 the course of a business, trade, or in violation of the statute or common law of all US states,

1 including but not limited to: laws of California, California Business & Professions Code §17200
2 *et seq.*; New York, N. Y. GEN. BUS. L. §349; South Carolina, S. C. CODE ANN. §§39-5-10 to
3 39-5-560; and Utah, UTAH CODE ANN. §13-5-1, *et seq.*; and the unfair and deceptive trade
4 practices statutes and common law of other states, including but not limited to: Illinois, 815 ILL.
5 COMP. ANN. 510/1 to 510/7; Maine, ME. Rev. Stat. TIT. 10, §§ 1211-1216; Minnesota, Minn.
6 Stat. Ann. §§ 325D.43-325D.48; and Ohio, OHIO REV. CODE ANN. §§ 4165.01 to 4165.04.

7 84. Defendant's unauthorized use of the infringing SNOWFLAKE mark has caused
8 and is likely to continue to cause substantial and irreparable injury to the public and to Yeti Data
9 and Yeti Data is entitled to recover damages, punitive damages, costs, and reasonable attorneys
10 fees. Yeti Data has not only lost sales but has suffered damage to its goodwill and reputation in
11 the marketplace that money cannot compensate. Such irreparable injury will continue unless
12 Defendant is enjoined by this Court from further committing unfair and unlawful business
13 practices against Yeti Data.

14 **COUNT V**

15 **[Unfair Competition Under the Common Law of the State of California]**

16 85. Yeti Data repeats and realleges each and every allegation in paragraphs 1-83 of
17 this Complaint as though fully set forth herein.

18 86. By virtue of the acts complained of herein, Defendant has intentionally caused a
19 likelihood of forward and reverse confusion among the purchasing public in this judicial district
20 and elsewhere, thereby unfairly competing with Yeti Data in violation of the common law of the
21 state of California.

22 87. By its actions, Defendant has injured and violated the rights of Yeti Data in an
23 amount to be determined at trial.

24 88. By its actions, Defendant has irreparably injured Yeti Data. Such irreparable injury
25 will continue unless Defendant is enjoined by this Court from further violation of Yeti Data's
26 rights, for which Yeti Data has no adequate remedy at law.

27 ///

28 ///

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

COUNT VI

[Violation of California Business & Professions Code § 17500]

89. Yeti Data repeats and realleges each and every allegation in paragraphs 1-87 of this Complaint as though fully set forth herein.

90. Defendant’s acts, as alleged herein, constitute false or misleading statements under California Business & Professions Code § 17500 *et seq.*

91. Defendant’s false or misleading statements were and continue to be willful and intentional, as is evidenced, among others, by the fact that Defendant started to tout Plaintiff’s the infringing SNOWFLAKE mark as their own.

92. Defendant’s false or misleading statements will continue unless enjoined by this Court. Yeti Data has suffered and continues to suffer irreparable injury, for which it has no remedy at law as a result of Defendant’s false or misleading statements.

93. Defendant’s false or misleading statements have caused and are likely to cause substantial injury to Yeti Data, and Yeti Data is entitled to disgorgement of Defendant’s profits and injunctive relief.

COUNT VII

[Unjust Enrichment]

94. Yeti Data repeats and realleges each and every allegation in paragraphs 1-92 of this Complaint as though fully set forth herein.

95. As a result of Defendant’s conduct, Defendant has been unjustly enriched at the expense of Yeti Data and the law thereby implies a contract by which Defendant must pay to Yeti Data the amount by which, in equity and good conscience, the Defendant has been unjustly enriched at the expense of Yeti Data.

PRAYER FOR RELIEF

WHEREFORE, Yeti Data prays that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

1 1. That the Court render a final judgment in favor of Yeti Data and against Defendant
2 on all claims for relief herein;

3 2. That the Court render a final judgment declaring Defendant has violated and
4 willfully violated the provisions of 15 U.S.C. § 1114 by infringing Yeti Data's trademark rights in
5 its federally registered YETI SNOWFLAKE mark;

6 3. That the Court render a final judgment declaring that Defendant has violated and
7 willfully violated the provisions of 15 U.S.C. § 1125(a) by using a false designation of origin
8 through the marketing, sale and promotion of Defendant's products and related services;

9 4. That the Court render a final judgment declaring that Defendant has violated the
10 provisions of California Business & Professions Code § 17200 *et seq.* and the respective laws of
11 other states by unfairly competing with Yeti Data;

12 5. That the Court render a final judgment declaring that Defendant has violated the
13 provisions of California Business & Professions Code § 17500 *et seq.* by engaging in unlawful,
14 unfair, and fraudulent business practices;

15 6. That the Court render a final judgment declaring that Defendant has violated
16 California Common Law by infringing Yeti Data's trademark rights in its federally registered
17 YETI SNOWFLAKE mark;

18 7. That the Court render a final judgment declaring that Defendant has violated
19 California common law by unfairly competing with Yeti Data;

20 8. That Defendant, their officers, principals, agents, servants, employees, attorneys,
21 successors, and assigns and all other persons acting for, with, by, through, or under authority from
22 Defendant, or in concert or participation with any of them who receive actual notice of the
23 injunction by personal service or otherwise, be enjoined permanently, from:

- 24 a. using Yeti Data's YETI SNOWFLAKE mark in connection with
25 Defendant's goods and services, in advertising, promoting, selling or offering to sell
26 Defendant's goods and services, and/or using confusingly similar variations of Yeti Data's
27 YETI SNOWFLAKE mark or colorable imitations thereof in any manner that is likely to
28 create the impression that Defendant's goods and services originate from Yeti Data, are

1 endorsed by Yeti Data, or are connected in any way with Yeti Data;

2 b. copying, reproducing, distributing, displaying, and/or importing,
3 manufacturing, or producing any products or rendering any services bearing copies,
4 confusingly similar or colorable imitations of Yeti Data's YETI SNOWFLAKE mark;

5 c. passing off, palming off, or assisting in passing off or palming off
6 Defendant's goods and services as those of Yeti Data or otherwise unfairly competing
7 with Yeti Data in any manner whatsoever;

8 d. falsely designating the origin of Defendant's goods or services;

9 e. causing a likelihood of confusion or reverse confusion or injury to Yeti
10 Data's business reputation;

11 f. and otherwise infringing the YETI SNOWFLAKE mark.

12 9. That Defendant be ordered to deliver up for impoundment and for destruction all
13 infringing materials in its possession, labels, tags, signs, advertising, promotional material,
14 stationary or other materials, whether electronic or otherwise, in their possession, custody, or
15 control that are found to adopt, infringe, or otherwise unfairly compete with Yeti Data and its
16 products, pursuant to 15 U.S.C. § 1125 and all other state and federal law.

17 10. That Defendant be ordered to recall all products sold or services rendered in the
18 U.S. bearing the YETI SNOWFLAKE mark or any confusingly similar variation thereof, which
19 have been delivered by Defendant or under its authority, to any customer in the U.S., including,
20 but not limited to, any wholesaler, distributor, retailer, consignor, or marketer, and also to deliver
21 to each customer a copy of this Court's order as it relates to said injunctive relief against
22 Defendant.

23 11. That Defendant be directed to file with this Court and serve on Yeti Data within
24 thirty (30) days after the service of the injunction, a report, in writing, under oath, setting forth in
25 detail the manner and form in which Defendant has complied with the injunction pursuant to 15
26 U.S.C. § 1116;

27 12. That Defendant be compelled to render a full and complete accounting to Yeti
28 Data for any and all profits, gains, and advantages derived by Defendant from the sale or

1 distribution of infringing goods in the U.S. as described in this Complaint and the advantages or
2 business opportunities received from the foregoing acts of infringement;

3 13. That Defendant be compelled to account for and turn over to Yeti Data all gains,
4 profits, and advantages derived by Defendant for making false or misleading statements and
5 engaging in acts of unfair competition in violation of California Business & Professions Code §§
6 17200 and 17500, as well as such gains, profits, and advantages available under federal, state, and
7 common law;

8 14. That the Court enter judgment for Yeti Data against Defendant for all damages
9 suffered by Yeti Data caused by the acts forming the basis of this Complaint and for any profits
10 or gain by Defendant attributable to infringement of Yeti Data's intellectual property in amounts
11 to be determined at trial;

12 15. That Defendant's actions be deemed willful;

13 16. That the amount of damages be increased three times and the award of
14 Defendant's profits be enhanced and increased as many times as the Court deems appropriate
15 pursuant to 15 U.S.C. § 1117;

16 17. That the Court enter judgment for Yeti Data against Defendant for punitive
17 damages, in amounts to be determined at trial, based on Defendant's willful and deliberate
18 infringement of the YETI SNOWFLAKE mark and to deter such conduct in the future;

19 18. That Defendant be required to pay to Yeti Data the costs and disbursements,
20 including reasonable attorneys' fees, that Yeti Data has and will incur in this action pursuant to,
21 among others, 15 U.S.C. § 1117(a) *et seq.* and the state statutes cited in this Complaint;

22 19. Award Yeti Data pre-judgment and post-judgment interest, to the fullest extent
23 available, on the foregoing;

24 20. That Defendant be ordered to pay for the costs of remedial advertising to counter
25 the effects of any forward or reverse confusion arising from Defendant's substantial marketing
26 campaign; and

27 21. Grant such other, further and different relief as the Court deems just and proper.

28 ///

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

Dated: July 3, 2020

Respectfully submitted,

/s/ Christian W. Liedtke

Christian W. Liedtke (SBN 297523)

cw.liedtke@acuminis.biz

acuminis

3420 Bristol Street, 6th Floor

Costa Mesa, CA 92626

Phone: (949) 698-7840

Facsimile: (949) 698-7861

Attorney for Plaintiff Yeti Data, Inc.

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

JURY TRIAL DEMAND

Yeti Data respectfully demands a trial by jury on all claims and issues so triable.

Dated: July 3, 2020

Respectfully submitted,

/s/ Christian W. Liedtke

Christian W. Liedtke (SBN 297523)

cw.liedtke@acuminis.biz

acuminis

3420 Bristol Street, 6th Floor

Costa Mesa, CA 92626

Phone: (949) 698-7840

Facsimile: (949) 698-7861

Attorney for Plaintiff Yeti Data, Inc.