

CAUSE NO. C-1-CV-18-000488

LSG VODKA LLC d/b/a
PERSPECTV DISTILLING CO.

Plaintiff,

v.
DON JAGODA ASSOCIATES, INC.
Defendant.

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IN THE COUNTY COURT

AT LAW NO. 1

TRAVIS COUNTY, TEXAS

PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, LSG VODKA LLC d/b/a Perspectv Distilling Co. ("Perspectv" herein), complaining of Don Jagoda Associates, Inc. (herein after referred to as "DJA") and in support thereof respectfully shows the court as follows:

I. DISCOVERY CONTROL PLAN

1. Pursuant to Tex. R. Civ. P. 190, Plaintiff intends to conduct discovery in this matter under Level 3.

III. THE PARTIES

2. Plaintiff is a Texas Corporation with its principal place of business in Travis County, Texas.

3. Defendant DJA, is a foreign corporation organized and existing under the laws of New York, whose principal office is located at 100 Marcus Dr., Melville, New York 11747 and may be served with process by serving the Texas Secretary of State at 1019 Brazos Street, Austin, Texas, as its agent for service

Secretary of State at 1019 Brazos Street, Austin, Texas, as its agent for service because Defendant engages in business in Texas but does not maintain a regular place of business in Texas or a designated agent for service of process, and this suit arose from Defendant's business in this state.

IV. JURISDICTION AND VENUE

4. Venue is proper in Travis County, Texas pursuant to Tex. Civ. Prac. & Rem. Code §15.02(a)(1) because all or a substantial part of the events giving rise to the claim occurred in Travis County. Jurisdiction is proper because the Court has personal jurisdiction over all parties and the amount in controversy is within the jurisdictional limits of the Court. Plaintiff seeks monetary relief of over \$100,000 but not more than \$200,000.

V. FACTS

6. On or about April 24, 2017, Perspectv entered into an agreement with DJA for DJA to provide sweepstakes services. See April 24, 2017 Contract, attached as Exhibit 1 and incorporated herein by reference.

7. As per the agreement, DJA was to provide six (6) authorized winners from July through September 2017.

8. To date, DJA has only provided three (3) winners of the sweepstakes to Prespectv.

9. On or about September 15, 2017 Perspectv and DJA entered into an agreement to run a second sweepstakes. See September 15, 2017 Contract, attached as Exhibit 2 and incorporated herein by reference.

10. DJA agreed to provide account services for this sweepstakes as per the agreement.

11. Beginning in September 2017, Perspectv repeatedly made requests for the login information so that it could monitor the sweepstakes make determinations regarding advertising and marketing. DJA did not provide the contracted information even after months of requests.

12. After threatening legal action, DJA finally provided the login information on January 25, 2018, over four months after it was requested.

13. The failure to provide the information needed made it impossible for Perspectv to make marketing and advertising decisions that were critical to the success of the sweepstakes.

14. DJA sent multiple correspondences to Perspectv demanding payment prior to the completion of work.

15. DJA then threatened to send correspondence to the TABC if payment was not made.

16. DJA sent letters to attorneys that had worked for Perspectv in the past stating that they were behind on payments and demanding payment, even though DJA had failed to complete the contracted work.

VI. CAUSES OF ACTION

COUNT 1: DTPA

17. DJA violated the DTPA when it engaged in false, misleading, or deceptive practices that Perspectv relied on to Perspectv's detriment. Specifically, DJA

stated that they were a reputable company who could provide quality sweepstakes services, including timely providing winners and access to the sweepstakes webpage. This clearly was untrue, as DJA failed to provide three certified winners to the first contest and only after months of requesting provided any access and evidence that the second sweepstakes was being conducted.

18. Additionally, DJA represented that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law. DJA sent letters to two law firms stating that Perspectv had failed to pay as per their contract when the contract did not require payment until the work was complete, which it was not.

19. DJA violated the DTPA when it engaged in unconscionable action to Perspectv's detriment, and took advantage of Perspectv experience or capacity in running sweepstakes. DJA used extortion tactics to attempt to get payment prior to completing the work by threatening and possibly sending a letter to the TABC stating that Perspectv falsely advertised a sweepstakes, as it had not awarded all six of the winners, sent letters to two law firms that Perspectv had previously engaged stating that they were unethical and refused to pay their bills, when no bill was due.

20. DJA's wrongful conduct was a producing cause of Perspectv's injuries including economic damages, damage to business reputation and other unliquidated damages within the jurisdictional limits of this court.

21. DJA acted knowingly and/or intentionally which entitles Perspectv to recover treble damages under the Texas Business and Commerce Code Sec. 17.50(b)(1).

22. Perspectv is entitled to recover reasonable and necessary attorney fees for the prosecution of this suit.

Count 2- Breach of Contract

23. Two valid and enforceable contracts have been entered into between Perspectv and DJA. By these contracts, DJA agreed to provide sweepstakes services.

24. DJA breached the contract by failing to provide the six (6) verified award winners to Perspectv and by failing to provide information and services regarding the second sweepstakes.

25. DJA's breach caused injury to Perspectv which resulted in damages.

26. Perspectv seeks unliquidated damages within the jurisdictional limits of this Court.

27. Perspectv is entitled to recover reasonable and necessary attorney fees for the prosecution of this suit.

COUNT 3: - Tortious Interference with Business Relations

28. Plaintiff has a valid business and Defendants were aware of Plaintiff's business and business relationships.

29. Defendant's tortious conduct willingly and intentionally interfered with the business relationships.

30. Defendant's tortious conduct proximately caused Plaintiff's injury.

31. Plaintiff suffered actual damages and/or loss due to Defendants' tortious interference.

32. Defendant's actions have been willful and intentional, making this case eligible for an award of exemplary damages under Texas law.

33. Perspectv is entitled to recover reasonable and necessary attorney fees for the prosecution of this suit.

COUNT 4: - Tortious Interference with Contract and Prospective Contracts

34. Plaintiff has valid contracts and prospective contracts and Defendants knew of the contracts and/or had knowledge of the facts and circumstances that would lead Defendants to believe that Plaintiff had valid and prospective contracts.

35. Defendant's tortious conduct willingly and intentionally interfered with the business contracts and prospective contracts.

36. Defendant's tortious conduct proximately caused Plaintiff's injury.

37. Plaintiff suffered actual damages and/or loss due to Defendants' tortious interference.

VII. ATTORNEY FEES

38. Plaintiff has been required to employ the undersigned as its attorneys and has agreed to pay reasonable attorney fees for legal services rendered and to be

rendered in this case. Plaintiff entitled and do request an award of reasonable and necessary attorney fees from Defendants.

VIII. DEMAND FOR A JURY TRIAL

39. Plaintiff demands trial by jury and hereby tenders the requisite fee.

IX. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant DJA be cited to appear, answer, and upon final trial, that Plaintiff be awarded a judgment and orders against Defendants, jointly and severally, for the following:

- a. Actual damages;
- b. Statutory damages;
- c. Exemplary damages;
- d. Treble damages;
- e. Reasonable and necessary attorney fees;
- f. Costs of suit;
- g. Pre and Post Judgment interest at the highest rates permitted by law; and
- h. Any other relief in law or equity to which Plaintiff may be entitled.

Respectfully submitted,

Hawkins Parnell Thackston & Young, LLP
1717 West 6th Street, Suite 250
Austin, Texas 78703
(512) 687-6909
(512) 687-6990 (Fax)

By: 

Amy C. Welborn
State Bar No. 24012853
awelborn@hptylaw.com

ATTORNEY FOR PLAINTIFF

VERIFICATION

STATE OF TEXAS

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§
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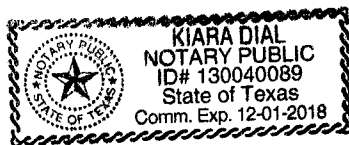
COUNTY OF TEXAS

BEFORE ME, the undersigned notary, on this day personally did appeared W. Scott Murray, the affiant, a person whose identity is known to me. After I administered an oath to the affiant, affiant testified:

"My name is W. Scott Murray I am capable of making this verification. I have read the Petition. The facts stated in it are with my personal knowledge and are true and correct."


W. Scott Murray

Given under my hand and seal of office this 30th day of January, 2018, to which witness my hand and seal of office.



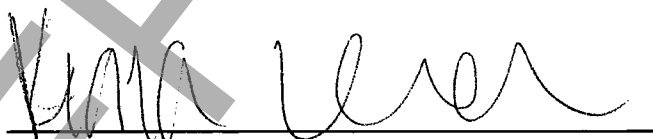

Notary Public in and for the State of Texas

EXHIBIT 1



April 21, 2017

Scott Murray
Perspectv Distilling Company
scott.murray@perspectvdistilling.com

Dear Scott,

We are delighted to provide this letter of agreement for the upcoming This Round's On Us Student Loan Sweepstakes (the "Sweepstakes") sponsored by Perspectv Distilling Company. This letter of agreement will confirm the details of the Sweepstakes, detail the services Don Jagoda Associates ("DJA") will provide, and the associated costs.

Sweepstakes Description:

As we understand it, Perspectv Distilling Company will be sponsoring the Sweepstakes to promote the launch of their new brand The Sh!T Vodka. The Sweepstakes will award six (6) Grand Prizes of \$5,000 each (awarded in the form of a check) to be used to pay a student loan. The Sweepstakes details are as follows:

- To enter the Sweepstakes, consumers will visit a Sweepstakes specific microsite from July through September, provide their date of birth and then subsequently complete a registration form to receive one (1) entry into the Sweepstakes. There is a limit of one entry per person per day during the Sweepstakes.
- The Sweepstakes will be open to residents of Texas who are 21 years of age or older as of date of entry.
- The Sweepstakes will award six (6) Grand Prizes of \$5,000 each, awarded in the form of a check. Checks will be cut and sent to winners by the sponsor.

DJA Services & Fees:

Services	Fee
1. Sweepstakes Administration & Implementation: <ul style="list-style-type: none">a. Assist in the development of the Sweepstakes structure, budget and mechanics based on client objectivesb. Provide a dedicated account team to manage the daily workflowc. Create a project timeline to ensure timely execution of deliverablesd. Participate in conference callse. Review externally created marketing materials for content related to the Sweepstakesf. Provide legal advice and counsel pertaining to the Sweepstakesg. Draft Official Rules in accordance with our understanding of current federal, state and local laws and regulationsh. Conduct the random drawing from all Sweepstakes entries to select winnersi. Draft Affidavit of Eligibility/Liability Release related to the Grand Prize award <p><i>Please Note: The Sweepstakes Administration & Implementation fee includes up to 12 hours of account management, up to 2 hours of legal counsel and the legal review of up to four creative elements. The Sweepstakes Administration & Implementation fee does not include copyright or</i></p>	\$3,500.00



<i>trademark clearance of the Sweepstakes name or copy used in externally created marketing materials. The agreement incorporates the necessary time and resources to complete our services as we currently understand the Sweepstakes. Additional fees will be incurred if the client requests services outside of our original scope of work. Additional time and/or services will not be billed without prior Client approval. Additional Account Management will be billed @ \$150/hour. Additional Legal Counsel will be billed @ \$300/hour.</i>	
2. Technical Services: <ul style="list-style-type: none">a. Provide a dedicated IT team to execute technical servicesb. Evaluate client's media schedule, anticipated response and the Sweepstakes technical specifications to determine optimum infrastructure including hardware architecture, bandwidth, programming, database design and security.c. HTML Code registration and support pages (Thank You, Already Entered, etc.) that will live on template Sweepstakes website.d. Program registration page and support pages of template Sweepstakes website.e. Complete Quality Control procedures, including review of code, database and hardwaref. Perform Quality Assurance on the functionality of the website in multiple environmentsg. Provide functional review site for testing, questions, and commentsh. Prepare production environment for launchi. Host the template Sweepstakes website for the duration of the Sweepstakesj. Collect and manage entry databasek. Develop reporting tool for client access to statistics on registrations, entries, opt-ins, etc.	\$4,750.00
3. Winner Administration: <ul style="list-style-type: none">a. Generate and send Affidavit of Eligibility/Liability Release via DocuSign to each potential Grand Prize winner @ \$45 per attempt, totaling \$270. Review returned Releases for completeness and verification of eligibility requirements before moving forward with confirming winner. Additional Release attempts will be billed as incurred.b. Prepare and file IRS form 1099 @ \$50 each, totaling \$300	\$570.00
Estimated DJA Services Total	\$8,820.00

CHANGE CONTROL

Any changes to the work deliverables or requirements defined in this agreement should be initiated by written correspondence with the DJA Account Team. All change requests will undergo a time and cost analysis by DJA. As necessary, DJA may alter the pricing and deliverables outlined herein to account for impacts attributed to the requested changes.

CANCELLATION

It is further understood and agreed that Perspectv Distilling Company may cancel the Sweepstakes at any time and for any



reason. If the Sweepstakes is canceled for any reason whatsoever, Don Jagoda Associates shall be paid for all services rendered, and in any event, no less than 50% of the Sweepstakes Administration & Implementation fee, within ten (10) days following cancellation of the Sweepstakes. In addition, any amounts for which we have contracted, and are obliged to pay to third parties, as well as services that must be legally performed to complete the contract, shall also be paid within ten (10) days of billing. Cancellation of the Sweepstakes shall relieve you and Don Jagoda Associates, Inc. of any further obligations under this agreement. If the Sweepstakes is canceled after dissemination to the public, the following services must be legally performed to complete the contract: random drawing, awarding of prizes, state certification (if applicable) and fulfillment of winner's list requests.

PAYMENT TERMS

Services will be billed in arrears. Terms Net 30.

Scott, if the preceding is acceptable, please have this Letter of Agreement signed by a designated officer of Perspectv Distilling Company, return it to me, and I will have an authorized DJA representative countersign and forward a copy for your files.

We look forward to working with you.

Sincerely,
Jacqueline Lamberti
Senior Vice President

Perspectv Distilling Company:

Name: SCOTT MURRAY
Title: CEO
Signature: [Signature]
Date: 4/24/2017

Don Jagoda Associates, Inc.

Name: Larry Berney
Title: COO
Signature: [Signature]
Date: 4/24/17

EXHIBIT 2



September 15, 2017

Scott Murray
Perspectv Distilling Company
scott.murray@perspectvdistilling.com

Dear Scott,

We are delighted to provide this letter of agreement for the upcoming This Round's On Us Student Loan Sweepstakes (the "Sweepstakes") sponsored by Perspectv Distilling Company. This letter of agreement will confirm the details of the Sweepstakes, detail the services Don Jagoda Associates ("DJA") will provide, and the associated costs.

Sweepstakes Description:

As we understand it, Perspectv Distilling Company will be sponsoring the Sweepstakes to promote the launch of their new brand The Sh!T Vodka. The Sweepstakes will award six (6) Grand Prizes of \$5,000 each (awarded in the form of a check) to be used to pay a student loan. The Sweepstakes details are as follows:

- To enter the Sweepstakes, consumers will visit a Sweepstakes specific microsite from September 30, 2017 at 5:01 pm CT through March 2018, provide their date of birth and then subsequently complete a registration form to receive one (1) entry into the Sweepstakes. There is a limit of one entry per person per day during the Sweepstakes.
- The Sweepstakes will be open to residents of Texas who are 21 years of age or older as of date of entry.
- The Sweepstakes will award six (6) Grand Prizes of \$5,000 each, awarded in the form of a check. Checks will be cut and sent to winners by the sponsor.

DJA Services & Fees:

Services	Fee
1. Sweepstakes Administration & Implementation: <ul style="list-style-type: none">a. Provide a dedicated account team to manage the daily workflowb. Create a project timeline to ensure timely execution of deliverablesc. Participate in conference callsd. Review externally created marketing materials for content related to the Sweepstakese. Provide legal advice and counsel pertaining to the Sweepstakesf. Draft Official Rules in accordance with our understanding of current federal, state and local laws and regulationsg. Conduct the random drawing from all Sweepstakes entries to select winnersh. Draft Affidavit of Eligibility/Liability Release related to the Grand Prize award <p><i>Please Note: The Sweepstakes Administration & Implementation fee includes up to 12 hours of account management, up to 2 hours of legal counsel and the legal review of up to four creative elements. The Sweepstakes Administration & Implementation fee does not include copyright or trademark clearance of the Sweepstakes name or copy used in externally created marketing materials. The agreement incorporates the necessary time and resources to complete our</i></p>	\$2,750.00 (Note: This reflects a \$750 discount as the Sweepstakes is similar to a previous execution.)

■ NEW YORK
1014 Madison Avenue
New York, NY 10022
P: (212) 691-1200
F: (212) 691-1340

■ CALIFORNIA
1017 West Orange Avenue
Marina del Rey, CA 90403
T: (310) 508-0900
F: (310) 508-4897

■ WWW.DJA.COM
in conjunction with client



<i>services as we currently understand the Sweepstakes. Additional fees will be incurred if the client requests services outside of our original scope of work. Additional time and/or services will not be billed without prior Client approval. Additional Account Management will be billed @ \$150/hour. Additional Legal Counsel will be billed @ \$300/hour.</i>	
2. Technical Services: <ol style="list-style-type: none"> Provide a dedicated IT team to execute technical services Evaluate client's media schedule, anticipated response and the Sweepstakes technical specifications to determine optimum infrastructure including hardware architecture, bandwidth, programming, database design and security. HTML Code registration and support pages (Thank You, Already Entered, etc.) that will live on template Sweepstakes website. Program registration page and support pages of template Sweepstakes website. Complete Quality Control procedures, including review of code, database and hardware Perform Quality Assurance on the functionality of the website in multiple environments Provide functional review site for testing, questions, and comments Prepare production environment for launch Host the template Sweepstakes website for the duration of the Sweepstakes (6 months) Collect and manage entry database Develop reporting tool for client access to statistics on registrations, entries, opt-ins, etc. 	\$3,000.00 (Note: This reflects a \$1,750 discount as the Sweepstakes is similar to a previous execution and many elements will be utilized.)
3. Winner Administration: <ol style="list-style-type: none"> Generate and send Affidavit of Eligibility/Liability Release via DocuSign to each potential Grand Prize winner @ \$45 per attempt, totaling \$270. Review returned Releases for completeness and verification of eligibility requirements before moving forward with confirming winner. Additional Release attempts will be billed as incurred. Prepare and file IRS form 1099 @ \$50 each, totaling \$300 	\$570.00
Estimated DJA Services Total	\$6,320.00

CHANGE CONTROL

Any changes to the work deliverables or requirements defined in this agreement should be initiated by written correspondence with the DJA Account Team. All change requests will undergo a time and cost analysis by DJA. As necessary, DJA may alter the pricing and deliverables outlined herein to account for impacts attributed to the requested changes.

CANCELLATION

It is further understood and agreed that Perspectv Distilling Company may cancel the Sweepstakes at any time and for any reason. If the Sweepstakes is canceled for any reason whatsoever, Don Jagoda Associates shall be paid for all services

■ | NEW YORK
 Don Jagoda, Esq.
 111 West 19th Street
 New York, NY 10011
 Tel: 212.694.1842
 Fax: 212.694.1842

■ | CALIFORNIA
 Don Jagoda, Esq.
 181 West Center Avenue
 Menlo Park, CA 94025
 Tel: 650.329.3900
 Fax: 650.329.4842

■ | WWW.DJA.COM
 <don@donjagoda.com>

...and for every no less than 50% of the Sweepstakes Administration. In addition, any amounts for which we have rendered services, as well as services that must be legally performed to complete the contract, shall be due within 30 days of billing. Cancellation of the Sweepstakes shall relieve you and Don Jagoda Associates, Inc. of all obligations under this agreement. If the Sweepstakes is canceled after dissemination to the public, the following shall be performed to complete the contract: random drawing, awarding of prizes, state certification, and publication of the winner's list requests.

PAYMENT TERMS

Services will be billed in arrears. Terms Net 30.

Scott, if the preceding is acceptable, please have this Letter of Agreement signed by a designated officer of Perspectv Distilling Company, return it to me, and I will have an authorized DJA representative countersign and forward a copy for you.

We look forward to working with you.

Sincerely,
Jacqueline Lamberti
Senior Vice President

Perspectv Distilling Company:

Name: Scott Murray
Title: CEO
Signature: [Signature]
Date: 9/29/2017

Don Jagoda Associates, Inc.

Name: _____
Title: _____
Signature: _____
Date: _____