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 13 UNITED STATES DISTRICT COURT
 14 DISTRICT OF ARIZONA
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18 Village Voice Media Holdings, LLC,)	
)	
20 Plaintiff,)	
)	
22 v.)	Case No.
)	
24 Yelp, Inc.,)	COMPLAINT
)	
26 Defendant.)	

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 28
 29 Plaintiff Village Voice Media Holdings, LLC, brings this Complaint against
 30 Defendant Yelp, Inc.

31 **JURISDICTION AND VENUE**

32 1. Jurisdiction of this court arises under 28 U.S.C. §§ 1331 and 1338,
 33 and 15 U.S.C. § 1121.

34 2. Venue is proper within the District of Arizona pursuant to 28 U.S.C.
 35 § 1391 (b) (c).

1 **GENERAL ALLEGATIONS**

2 3. Village Voice Media Holdings, LLC, ("Plaintiff" or "VVMH"), is a
3 Delaware Limited Liability Company which maintains its principal place of
4 business in the State of Arizona at 1201 East Jefferson Street, Phoenix, Arizona
5 85034. VVMH, through various subsidiaries, publishes weekly newspapers in
6 Phoenix, Denver, Houston, Dallas, Miami, Seattle, San Francisco, St. Louis, the
7 Twin Cities, Broward and Palm Beach counties in Florida, and other cities. Each
8 of those newspapers operates a site on the world wide web on which the news
9 stories and features appearing in the respective newspapers are published and on
10 which other material also appears. Each of the individual subsidiaries has been
11 licensed by VVMH to use certain VVMH trademarks.

12 4. Defendant Yelp, Inc., ("Yelp") is a corporation which, among other
13 things, operates pages on the world wide web which promote and describe
14 activities in various cities in which VVMH publishes a newspaper, including web
15 sites describing events and establishments in Phoenix, Denver, Houston, Dallas,
16 Miami, Seattle, San Francisco, St. Louis, the Twin Cities, and Broward and Palm
17 Beach counties in Florida.

18 5. Yelp has caused events to occur in Arizona giving rise to jurisdiction.

19 6. VVMH has for many years in each of Phoenix, Denver, Houston,
20 Dallas, Miami, Seattle, San Francisco, St. Louis, the Twin Cities, Broward and Palm
21 Beach counties in Florida, and other cities, published an annual edition of its

1 newspaper which describes and features categories of restaurants,
2 entertainment, shopping, events and other categories in which specific
3 enterprises or events are identified as the best in each category. Each of these
4 annual publications prominently uses throughout the publication, and in
5 advertising and promotion, the phrase "Best of [place name]." The categories and
6 winners are made part of the web pages for each of the newspapers in those cities
7 and can be accessed by users of the world wide web throughout the year.

8 7. VVMH prints a significant number of extra copies of the editions of
9 its "Best of" edition newspapers, because of the demand for that information.
10 VVMH receives a high volume of "hits" on its "Best of" web pages, reflecting both a
11 significant demand for the knowledge contained therein and a recognition of the
12 content of the "Best of" sites. VVMH sells advertising in the supplements to its
13 newspapers which contain the "Best of" features and VVMH sells advertising on
14 the web pages containing the "Best of" features.

15 8. After publication of VVMH's "Best of" editions, many of the entities
16 selected for BEST OF recognition order plaques, certificates, reprints, window
17 stickers, and other VVMH BEST OF-related merchandise. These products are in
18 turn displayed year-round in high-rated establishments, thereby reminding
19 viewers of the trademark and the publication, and increasing loyalty to the "BEST
20 OF" program.

1 9. VVMH owns, and licenses to its appropriate subsidiaries, the
2 following relevant federal service mark registrations (collectively the "Registered
3 Marks"):

Entity	Service	Class	Registration Number	Registration Date	Date of First Use
New Times BPB, LLC	BEST OF BROWARD PALM BEACH	35	3,156,284	10-17-2006	3-11-1999
New Times BPB, LLC	BEST OF BROWARD PALM BEACH	16 & 41	4,183,174	7-31-2012	3-11-1999
Dallas Observer, LP	BEST OF DALLAS	35	2,098,988	9-23-1997	7-12-1984
Dallas Observer, LP	BEST OF DALLAS	16 & 41	4,175,661	7-17-2012	7-12-1984
Denver Westword, LLC	BEST OF DENVER	35	2,098,909	9-23-1997	4-1-1984
Denver Westword, LLC	BEST OF DENVER	16 & 41	4,175,657	7-17-2012	4-1-1984
Houston Press, LP	BEST OF HOUSTON	35	2,102,832	10-7-1997	9-27-1990
Houston Press, LP	BEST OF HOUSTON	16 & 41	4,175,664	7-17-2012	9-27-1990
Miami New Times, LLC	BEST OF MIAMI	35	2,094,511	9-9-1997	2-14-1990
Miami New Times, LLC	BEST OF MIAMI	16 & 41	4,175,658	7-17-2012	2-14-1990
Phoenix New Times, LLC	BEST OF PHOENIX	35	2,098,989	9-23-1997	3-28-1979
Phoenix New Times, LLC	BEST OF PHOENIX	16 & 41	4,175,364	7-17-2012	3-28-1979
Riverfront Times, LLC	BEST OF ST. LOUIS	35	2,441,835	4-10-2001	11-19-1998

Entity	Service	Class	Registration Number	Registration Date	Date of First Use
Riverfront Times, LLC	BEST OF ST. LOUIS	16 & 41	4,185,847	8-7-2012	11-19-1998
SF Weekly, LP	BEST OF SAN FRANCISCO	35	2,842,140	5-18-2004	6-26-1996
SF Weekly, LP	BEST OF SAN FRANCISCO	16 & 41	4,183,146	7-31-2012	6-26-1996
Seattle Weekly, LLC	BEST OF SEATTLE	16 & 41	2,690,516	2-25-2003	10-8-1986
City Pages, LLC	BEST OF THE TWIN CITIES	16 & 41	2,688,355	2-18-2003	6-25-1986

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2 All of the class 35 registrations cover conducting incentive award programs to
3 promote the business of retail establishments through the demonstration of
4 excellence in customer service, quality of products or services, and generally in
5 their field. All of the class 16 and 41 registrations cover annual newspaper
6 supplements in the field of listing individuals and businesses that have achieved
7 excellence in areas of interest to the general public and conducting awards
8 programs honoring individuals and companies that have demonstrated
9 excellence in their fields, in the quality of their products and services and in
10 customer service. True and correct copies of the federal registrations of the
11 Registered Marks are attached as Exhibit A to this Complaint.

12 10. VVMH has adopted and is using the “Best of” service marks for
13 disseminating information through newspaper supplements and on the world
14 wide web about establishments and events which are considered by VVMH to

1 represent the highest achievement in individual categories on a yearly basis and
2 well as to disseminate information about the establishments and events which
3 are considered by the readers of VVMH's newspapers and the viewers of VVMH's
4 web sites to represent the highest achievement in the same categories.

5 11. The registrations described in paragraph 9 above are in full force
6 and effect and are the property of VVMH, which is the exclusive owner of all
7 rights and goodwill pertinent to the Registered Marks. The "Best of" service
8 marks are the property of and are exclusively used by VVMH. VVMH and each
9 respective subsidiary has expended substantial sums of money and time in the
10 development and promotion of the Registered Marks and the "Best of" marks, and
11 has established a valuable reputation and goodwill in the Registered Marks and
12 the "Best of" marks. The "Best of" marks have become distinctive of the VVMH's
13 goods and services in commerce.

14 12. In September, 2012, VVMH became aware that Yelp was using
15 VVMH's Registered Marks and "Best of" marks BEST OF PHOENIX, BEST OF
16 DENVER, BEST OF HOUSTON, BEST OF DALLAS, BEST OF SAINT LOUIS, BEST OF
17 SAN FRANCISCO, BEST OF SEATTLE, BEST OF TWIN CITIES, BEST OF BROWARD
18 PALM BEACH COUNTY and BEST OF MIAMI on its web pages featuring
19 establishments and events in each of the referred-to places. Examples of Yelp's
20 uses of the Registered Marks are attached as Exhibit B to this Complaint.

1 DENVER, BEST OF HOUSTON, BEST OF DALLAS, BEST OF SAINT LOUIS, BEST OF
2 SAN FRANCISCO, BEST OF SEATTLE, BEST OF TWIN CITIES, BEST OF BROWARD
3 PALM BEACH COUNTY and BEST OF MIAMI in commerce and continues to so use
4 the marks. Yelp has no authorization from VVMH to use the marks. Yelp is taking
5 such action willfully and with full knowledge of VVMH's prior use of and rights in
6 the Registered Marks.

7 19. Yelp's use of the BEST OF PHOENIX, BEST OF DENVER, BEST OF
8 HOUSTON, BEST OF DALLAS, BEST OF SAINT LOUIS, BEST OF SAN FRANCISCO,
9 BEST OF SEATTLE, BEST OF TWIN CITIES, BEST OF BROWARD PALM BEACH
10 COUNTY and BEST OF MIAMI Registered Marks is a violation of VVMH's rights
11 and constitutes and will constitute an infringement of VVMH's registrations. Such
12 utilization is likely to cause confusion, mistake and deception of consumers as to
13 the source of Yelp's goods and services in light of VVMH's Registered Marks.

14 20. VVMH has been and will continue to be irreparably harmed by Yelp's
15 unauthorized use of the Registered Marks. The inability of VVMH to control the
16 information to be disseminated under the Registered Marks by Yelp will cause
17 injury to the valuable reputation and goodwill VVMH has developed in these
18 marks as well as constituting unfair competition.

19 21. As a direct and proximate result of Yelp's violation of VVMH's
20 Registered Marks, VVMH has been and will be damaged by a loss of reader
21 loyalty, advertising sales, and profits. Further, Yelp has benefited and will benefit

1 in the future by its continued unauthorized use of VVMH's Registered Marks,
2 thereby realizing sales and profits that would not otherwise have obtained.

3 22. The sale of advertising on the web pages of Yelp and the sale of
4 services by Yelp while using VVMH's Registered Marks constitute knowing,
5 malicious and willful infringement of VVMH's trademark rights under 15 U.S.C. §
6 1114(1). VVMH is entitled to Yelp's profits, VVMH's actual damages to be proven
7 at trial, and treble damages as a result of the above described trademark
8 infringement. Furthermore, VVMH is entitled to its reasonable attorneys' fees
9 and costs pursuant to 15 U.S.C. § 1117(a).

10 WHEREFORE Plaintiff prays for judgment against Defendant as follows:

11 A. Defendant be ordered to make an accounting of the sales and
12 profits derived by it by reason of its unlawful acts, and Defendant be held
13 liable to Plaintiff for such profits;

14 B. Plaintiff be awarded its actual damages as a result of the
15 trademark infringement complained of against Defendant in an amount to
16 be proven at trial;

17 C. Plaintiff be awarded treble damages against Defendant
18 pursuant to 15 U.S.C. § 1117(b);

19 D. Plaintiff be awarded its attorneys' fees and costs of this action
20 pursuant to 15 U.S.C. §1117(a); and

1 E. For such other and further relief as this court deems just and
2 proper.

3 **COUNT TWO (False Designation of Origin)**

4 23. Plaintiff incorporates the allegations of paragraphs 1 through 22 as
5 if fully set forth herein.

6 24. This count arises under 15 U.S.C. § 1125(a), Section 43(a) of the
7 Lanham Act, for false designation, description, and representation of goods and
8 services as to their nature and origin.

9 25. Subsequent to the adoption and use by VVMH of its “Best of” ‘ Marks
10 for and in connection with the goods and services described in this complaint,
11 Yelp adopted VVMH’s BEST OF PHOENIX, BEST OF DENVER, BEST OF HOUSTON,
12 BEST OF DALLAS, BEST OF SAINT LOUIS, BEST OF SAN FRANCISCO, BEST OF
13 SEATTLE, BEST OF TWIN CITIES, BEST OF BROWARD PALM BEACH COUNTY and
14 BEST OF MIAMI marks.

15 26. Yelp is neither authorized nor licensed to use VVMH’s “Best of”
16 marks. Despite this fact, Yelp has used, is using, and has expressed its intent to
17 use in the future VVMH’s “Best of” marks as a designation of the origin of Yelp's
18 goods and services. In adopting and using VVMH’s “Best of” marks and other
19 related items in commerce, Yelp has falsely designated, described and
20 represented and will falsely designate, describe and represent the nature and
21 origin of its goods and services in violation of § 43(a) of the Lanham Act.

1 27. The “Best of” marks adopted by Yelp are actually VVMH’s marks and
2 items, and the use of such marks and related items by Yelp is likely to cause
3 confusion and mistake and to deceive users of the web sites of VVMH and Yelp
4 and actual and prospective advertisers on such web sites.

5 28. Yelp willfully and knowingly continues to commit the acts described
6 herein, has refused to cease committing such acts after due notice of VVMH’s
7 rights and is, therefore, deceiving the public while depriving VVMH of the sales
8 and profits it would otherwise obtain. Yelp has irreparably damaged the valuable
9 reputation and goodwill of VVMH and its “Best of” marks.

10 WHEREFORE Plaintiff prays for judgment against Defendant as follows:

11 A. Defendant be ordered to make an accounting of the sales and
12 profits derived by it by reason of its unlawful acts herein complained of
13 and Defendant be held liable to Plaintiff for such profits;

14 B. Plaintiff be awarded its actual damages suffered as a result of
15 Defendant's acts in an amount to be proven at trial;

16 C. Plaintiff be awarded treble damages against Defendant in an
17 amount sufficient to prevent such tortious conduct from occurring in the
18 future;

19 D. Plaintiff be awarded its attorneys' fees and costs of this action
20 pursuant to 15 U.S.C. §1117(a); and

1 recognized by the public throughout the Dallas and Houston
2 metropolitan areas, respectively, as a designation of source of the
3 services of VVMH

4 b. Yelp's use of BEST OF SAN FRANCISCO violates California
5 Business & Professions Code §14247 because VVMH's BEST OF
6 SAN FRANCISCO mark is famous within its geographic area of
7 use, and has acquired distinctiveness, and Yelp's use of BEST OF
8 SAN FRANCISCO, begun after VVMH's mark became famous in
9 that area, is likely to cause dilution of VVMH's mark.

10 c. Yelp's use of BEST OF MIAMI and BEST OF BROWARD PALM
11 BEACH violates Florida Statutes § 495.151 because VVMH's BEST
12 OF MIAMI and BEST OF BROWARD PALM BEACH marks are
13 famous within their geographic area of use, and Yelp's use of
14 identical marks, begun after the VVMH marks became famous in
15 those areas, is likely to cause dilution of the distinctive quality of
16 VVMH's marks.

17 d. Yelp's use of BEST OF ST. LOUIS violates Missouri Revised
18 Statutes § 417.061(1)(4), because VVMH's BEST OF ST. LOUIS
19 mark is distinctive and valid at common law, and has been
20 diluted by Yelp's use of an identical mark.

1 e. Yelp's use of BEST OF SEATTLE violates Revised Code of
2 Washington § 19.77.160 because VVMH's BEST OF SEATTLE
3 mark is famous in Washington State, and Yelp's use of an
4 identical mark, begun after the VVMH mark became famous, is
5 likely to cause dilution of the distinctive quality of VVMH's mark.

6 32. Dilution has occurred through blurring, because Yelp's use of
7 VVMH's marks has diluted and blurred the distinctiveness of VVMH's marks.

8 33. Dilution has occurred through tarnishment, because Yelp's use of
9 VVMH's marks has tarnished the reputation and goodwill associated with VVHM's
10 marks. On information and belief, tarnishment has occurred because Yelp has
11 used VVHM's "BEST OF" marks in connection with lists that have not been
12 assembled with the high level of research, care, and judgment that are applied to
13 VVMH's BEST OF lists.

14 34. Yelp's use of VVHM's marks in the identified states has injured and
15 will, unless enjoined by the Court, continue to cause injury to VVHM's business
16 reputation and will dilute the distinctive quality of VVHM's trademarks, in
17 violation of the identified statutes, all to VVMH's irreparable harm.

18 WHEREFORE Plaintiff prays for judgment against Defendant as follows:

19 A. Defendant be enjoined pursuant to Tex. Bus. & C. § 16.103(c)
20 from using BEST OF DALLAS or BEST OF HOUSTON in the Dallas and
21 Houston metropolitan areas;

1 B. Defendant be enjoined pursuant to Cal. Bus. & Prof. Code §
2 14247 from using BEST OF SAN FRANCISCO in the San Francisco
3 metropolitan area;

4 C. Defendant be enjoined pursuant to Fla. Stat. § 495.151 from
5 using BEST OF MIAMI or BROWARD PALM BEACH in the Miami and
6 Broward Palm Beach metropolitan areas;

7 D. Defendant be enjoined pursuant to Mo.Rev.Stat. § 417.061.1
8 from using BEST OF ST. LOUIS in Missouri;

9 E. Defendant be enjoined pursuant to RCW § 19.77.160 from
10 using BEST OF SEATTLE in Washington State;

11 F. Defendant be found to have willfully diluted Plaintiff's BEST
12 OF DALLAS and BEST OF HOUSTON marks, and Plaintiff therefore be
13 awarded damages in the amount of all of Defendant's profits derived from,
14 or damages resulting from, Defendant's use of those marks, including
15 treble damages and reasonable attorneys' fees, as appropriate, pursuant to
16 Tex. Bus. & C. § 16.103(c) & 104(b)&(c);

17 G. Defendant be found to have willfully diluted Plaintiff's BEST
18 OF SAN FRANCISCO mark, and Plaintiff therefore be awarded damages in
19 the amount of all of Defendant's profits derived from, or damages resulting
20 from, Defendant's use of that marks, including treble damages and

1 reasonable attorneys' fees, as appropriate, pursuant to Cal. Bus & Prof.
2 Code § 14250;

3 H. Defendant be found to have willfully diluted Plaintiff's BEST
4 OF MIAMI and BEST OF BROWARD PALM BEACH marks, and Plaintiff
5 therefore be awarded damages in the amount of all of Defendant's profits
6 derived from, or damages suffered by reason of Defendant's use of those
7 marks, including treble damages and reasonable attorneys' fees, as
8 appropriate, pursuant to Fla. Stat. § 495.141;

9 I. Defendant be found to have willfully diluted Plaintiff's BEST
10 OF SEATTLE mark, and Plaintiff therefore be awarded damages in the
11 amount of all of Defendant's profits derived from, or damages suffered by
12 reason of Defendant's use of that marks, including treble damages and
13 reasonable attorneys' fees, as appropriate, pursuant to RCWA §§ 19.77.160
14 and 19.77.150; and

15 J. For such other and further relief as this court deems just and
16 proper.

17 **COUNT FOUR (Preliminary and Permanent Injunction)**
18

19 35. Plaintiff incorporates the allegations of paragraphs 1 through 34 as
20 if fully set forth herein.

21 36. Yelp has been notified of VVMH's rights and has been requested to
22 cease from such trademark infringement, but has failed and refused to do so.

1 37. By reason of the acts alleged in this Complaint, Yelp has caused and
2 is causing irreparable injury to the business, reputation and goodwill of VVMH
3 and will continue to do so unless restrained by this court.

4 38. VVMH believes its remedy at law is inadequate in that Yelp refuses
5 to discontinue use of the Registered Marks and the "Best of" marks with respect
6 to Phoenix, Denver, Houston, Dallas, Saint Louis, San Francisco, Seattle, Twin
7 Cities, Broward Palm Beach and Miami, causing VVMH sustained and continuing
8 injury and loss as well as irreparable injury to the public's perception of the
9 knowledge and information provided by VVMH's newspaper supplements and
10 web pages, and Yelp should be enjoined from further use of VVMH's Registered
11 Marks and "Best of" marks.

12 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

13 A. A preliminary injunction be issued during the pendency of
14 this action, and a permanent injunction thereafter, restraining and
15 enjoining the Defendant, its agents, servants, employees, affiliates, parents,
16 subsidiaries and any others acting on its or their behalf:

17 (1) From using the Registered Marks or the "Best of" marks
18 in any manner on its web sites or elsewhere; and

19 (2) That the Defendants within five days from the date of
20 such order, remove the Registered Marks and the "Best of" marks from any
21 web site, marketing, solicitation, or other use and that all material items at

1 that time in existence which bear Plaintiff's Registered Marks or "Best of"
2 marks be destroyed or delivered to Plaintiff for destruction.

3 B. Plaintiff be awarded its attorneys' fees and costs of this action
4 pursuant to 15 U.S.C. § 1117(a); and

5 C. For such other and further relief as this court deems just and
6 proper.

7 DEFENDANT DEMANDS TRIAL BY JURY.

8 Respectfully submitted,

9
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