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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA-SANTA ANA DIVISION

MARK MISHAK, dba INEEDATV.COM **Plaintiff,** **-v-** **GOOGLE, INC., AMERICAN ONLINE, INC. NETSCAPE, INC., MICROSOFT NETWORK, INC., ASK JEEVES, INC., EXCITE, INC., WEBCRAWLER, INC., YAHOO, INC., CONVERSA, INC., LYCOS, INC., HOTBOT INC., ALTAVISTA INC., CRAIGSLIST INC., RESPOND INC., INFOSEEK INC., YELLOW PAGES INC., PLANETSEARCH INC., PRONET INC., NORTHERNLIGHT INC., LUCKYSURF INC., COMFIND INC., LIQUIDPRICE INC., EARTHLINK INC., DOES 1-100 Defendants,**	**Case # CV07-8258 CAS (JCRx)** **COMPLAINT FOR DAMAGES** **1. *Lanham Act*-Trademark Infringement** **2. *Lanham Act*-False Representation** **3. *Lanham Act*-Dilution** **4. Injury to Business Reputation** **5. Trademark Infringement & Unfair Competition** **6. Tortious Interference with Prospective Business Advantage** **7. Preliminary & Permanent Injunctive Relief**

PLAINTIFF ALLEGES AS FOLLOWS:

Plaintiff, Mark Mishak, d/b/a INEEDATV.com ("Mishak"), by and through its counsel, Roger James Agajanian, Esq., for its Complaint against Google, Inc. ("Google"), American Online, Inc. ("AOL"), Netscape Communications Inc. ("Netscape"), Ask Jeeves, Inc. ("Ask Jeeves"), Excite Inc. ("Excite"), Webcrawler Inc. ("Webcrawler"), Yahoo Inc. ("Yahoo"), Conversa Inc. ("Conversa") Lycos Inc. ("Lycos"), Hotbot Inc. ("Hotbot"), AltaVista Inc. ("AltaVista"), Craig's List Inc. ("CraigsList"), Respond Inc. ("Respond"), Infoseek Inc. ("Infoseek"), Yellow Pages Inc. ("Yellow Pages"), Planet Search Inc. ("Planet Search"), Pro Net Inc. ("Pro Net"), Northern

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Light ("Northern Light"), Lucky Surf Inc. ("Lucky Surf"), Confind Inc. ("Comfind"), Liquid Price ("Liquid Price") and EarthLink, Inc. ("EarthLink")(hereinafter collectively the "Defendants"), states as follows:

NATURE OF CASE

The Defendants operate for their own profit various Internet "search engines," which are used by consumers to search the World Wide Web for, among other things, products and services. More specifically:

1. When a person searches for a particular topic in a search engine, that search engine compiles a list of sites matching or related to the user's search terms, and then posts the lists of sites, known as search results.
2. All Defendants listed above sell advertising space on the earch result pages known as Banner Ads. These advertisements are commonly found on the top of the computer screen. These ads are often animated and whimsical. They are designed to entice the user to "click here". If the user does "click here", the user is transported to the website of the advertiser.
3. As with all advertising media, advertisers desire to target consumers matching a certain demographic profile.
4. Savvy website operators accommodate the advertisers by "keying" ads to match certain search terms entered by users. Defendants and each of them target these "key s earch terms" at a premium.
5. Plaintiff has a copyright. (Exhibit 1). trademark.
6. Plaintiff contends that in utter disregard to Mishak's intellectual rights, Defendants have sold "keywords" identical to certain of Mishak's trademarks to various third parties and have deliberately manipulated Defendants' search engine "results" so that, when

consumers use these search engines to find Mishak's products and services, the consumers are unwittingly diverted to competitors' products and services. By this unfair and deceitful conduct, Defendants' have infringed and diluted, and continue to infringe and dilute, Mishak's registered and unregistered service marks and trademarks.

Parties

7. Mark Mishak is an individual doing business as ineedatv.com..

8. Upon information and belief, Google is a Delaware corporation with a principal place of business in Mountain View, California. Upon information and belief, Google advertises, solicits clients, and conducts sales and purchases in the State of California and elsewhere.

9. Upon information and belief, AOL is a Delaware corporation with it's principal place of business in Dulles, Virginia. Upon information and belief, AOL maintains an office at 54 West 18th Street, New York, New York. In addition, AOL advertises, solicits clients, and conducts sales and purchases in the State of California and elsewhere.

10. Upon information and belief, Netscape is a Delaware corporation with it's principal place of business in Mountain View, California. Netscape advertises, solicits clients, and conducts sales and purchases in the States of New York, California and elsewhere.

11. Upon information and belief, Microsoft is a Delaware corporation with it's principal place of business in Seattle, Washington. Microsoft advertises, solicits clients, and conducts sales and purchases in the State of New York, California and elsewhere.

12. Upon information and belief, Ask Jeeves is a Delaware corporation with it's principal place of business in Emeryville, California. Upon information and belief, Ask Jeeves maintains an office at 50 West 17th Street, New York, New York. In addition, Ask

Jeeves advertises, solicits clients, and conducts sales and purchases in the State of California and elsewhere.

13. Upon information and belief, Excite is a Delaware corporation and advertises,solicits clients, and conducts sales and purchases in the State of California and elsewhere.

14. Upon information and belief, Webcrawler is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the State of California and elsewhere.

15. Upon information and belief, Yahoo is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the State of California and elsewhere.

16. Upon information and belief, Conversa is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the States of California and elsewhere.

17. Upon information and belief, Lycos is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the States of California and elsewhere.

18. Upon information and belief, Hotbot is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the States of California and elsewhere.

19. Upon information and belief, Altavista is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the States of California and elsewhere.

20. Upon information and belief, Craig's List is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the States of California and elsewhere.

21. Upon information and belief, Respond is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the States of California and elsewhere.

22. Upon information and belief, Infoseek is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the States of California and elsewhere.

23. Upon information and belief, Yellow Pages is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the States of California and elsewhere.

24. Upon information and belief, Planet Search is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the States of California and elsewhere.

25. Upon information and belief, Pronet is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the States of California and elsewhere.

26. Upon information and belief, Northern Light is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the States of California and elsewhere.

27. Upon information and belief, Lucky Surf is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the States of California and elsewhere.

28. Upon information and belief, Comfind is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the States of California and elsewhere.

29. Upon information and belief, Liquid Price is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the States of California and elsewhere.

30. Upon information and belief, Earthlink is a Delaware corporation and advertises, solicits clients, and conducts sales and purchases in the States of California and elsewhere.

Jurisdiction & Venue

31. This is an action arising under the *Lanham Act, 15 U.S.C. 1114(1)(a), 1125(a)*, and 1125(c). This Court has federal question jurisdiction over these claims pursuant to 15 *U.S.C. 1121, and 28 U.S.C. 1331, 1338(a) and 1338(b).*

32. The Court has subject matter jurisdiction over the state law claims pursuant to *28 U.S.C. 1367(a).*

33. Defendants are subject to the personal jurisdiction of this Court because, among other things, a substantial part of the events giving rise to this litigation occurred in the State of California.

34. In addition, Defendants are subject to the personal jurisdiction of this Court because, among other things, upon information and belief each of the Defendants is subject to California's *Long-arm Statute.*

35. In addition, Defendants are subject to the personal jurisdiction of this Court because, among other things, upon information and belief each of the Defendants have transacted and presently is transacting business in the states of California and elsewhere by: (a) providing Internet users in California access to its search engines; (b) providing Internet users in California advertising on its website; (c) contracting with, or

attempting to contract with, California residents for the sale of goods or services, including the sale of advertising space on its Internet website; (d) selling or attempting to sell goods to residents of the State of California; (e) maintaining an office in the State of California; and/or (f) committing tortious acts in the State of California.

PLAINTIFF'S TRADEMARKS

36. MISHAK d.b.a. INEEDATV.COM is one of the largest direct-to-consumer retailer of custom order televisions, appliances, and personal property in the United States and on the Internet. MISHAK, in conjunction with it's predecessor companies, has been in the home commercial, and personal appliance business for over 5 years. MISHAK sells and promotes its products and related services across the United States through a website and toll-free telephone numbers. Included herein as Exhibit 2 is a INEEDATV.COM tracking for just one week from 1-8-06 to 1-14-06. (Exhibit 2)

37. Since at least as early as 2002, and long prior to the acts of the Defendants complained of herein, MISHAK adopted and used, and has continued to use, the names and marks of INEEDATV.COM (hereinafter collectively identified as "INEEDATV.COM") in connection with its television, stereo, appliances, and other personal property products and related services, which have been offered for sale and sold in interstate commerce in the United States, including the State of California. Since the adoption and first use of the MISHAK name and mark as aforesaid, MISHAK has continuously used said mark by predominantly displaying it on the packaging and advertising for MISHAK's products , which have been advertised, promoted, offered for sale and sold in interstate commerce in the United States, including the State of California.

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38. In addition to the MISHAK name and mark, MISHAK is the owner of and has the exclusive rights to use the following trademarks registered with the United States Patent and Trademark Office: (Exhibit 1-Traademark Registration)

39. The name and mark MISHAK comprises a distinctive part of MISHAK's corporate title and trade name, which trade name has been prominently displayed by MISHAK upon its home decorating products and related services sold under MISHAK marks.

40. Since long prior to the acts of the Defendants complained herein, MISHAK's Home decorating products and related services sold under the MISHAK Marks have been extensively advertised, promoted and sold by MISHAK in interstate commerce throughout the United States, including the State of Californina. MISHAK, each year, expends thousands of dollars in connection with the advertisement and promotion of its products and services under the MISHAK Marks.

41. The dollar amount of sales in the United States of MISHAK's televisions, commercial and home appliances products and related services under the MISHAK Marks offered for sale and sold under the MISHAK Marks since the original adoption and use are well in excess of many tens of thousands with reasonable growth projections into the tens of millions of dollars.

42. Plaintiff has been careful, skillful and meticulous in the conduct of their television, home and commercial appliances and related services under the MISHAK Marks. Included herein as Exhibit 3 is a copy of Plaintiff's Home Page. (Exhibit 3-Home Page)

43. As a consequence, and as a result of the substantial sales and extensive advertising and promotion of MISHAK's said products and related services, supra, sold under the MISHAK Marks have acquired a fine reputation, and are famous among prospective

purchasers of said goods and services. The public has used and now uses the MISHAK Marks to identify MISHAK, INEEDATV.COM and its products to distinguish MISHAK and its products and services from competitors; and related services offered by others, and the MISHAK Marks have acquired an outstanding tracking (Exhibit 1) as a source of products and related services, and symbolizes and embodies the goodwill rightfully belonging exclusively to MISHAK.

The Internet and The World Wide Web

44. The Internet is a global network of millions of interconnected computers. The World Wide Web is a portion of the Internet especially suited to displaying images and sound, in to text. Much of the information on the World Wide Web is stored in the form of "webpages," which can be accessed through a computer connected to the Internet (available through commercial Internet services providers or "ISPs"), and viewed using a computer program called a "browser," such as Microsoft Internet Explorer or Netscape Navigator. "Websites" are locations on the World Wide Web containing a collection of webpages. A webpage is identified by its own unique Uniform Resource Locator ("URL")(*e.g.* "http://ineedatv.com"), which ordinarily incorporates its site's "domain name" (*e.g.* "Mishak").

45. Internet use in the United States has grown substantially in the last few years. Upon information and belief, more than half of the nation is now online.

46. Among internet users in the United States, it is estimated that thirty-nine percent (39%) currently use the Internet to make online purchases.

47. As a result, it is estimated that, today, annual Internet sales exceed $92 billion.

The Business of Plaintiff MISHAK

48. MISHAK spends thousands of dollars and thousands of hours each year advertising the MISHAK Marks, including advertising online.

49. Today, MISHAK had thousands customers nationwide and generates annual revenues in excess of hundreds of thousands.

50. Since 1997, MISHAK has continuously operated a distinctive Internet website located, among other places, at www.ineedatv.com, through which the company sells televisions appliances, and other personal appliances, and related services.

51. Today, MISHAK owns many Internet domain names…Accordingly, if a consumer using the Internet web browser types in any of the company's Uniform Resource Locators ("URLs") – for example, if a consumer types www.ineedatv.com in his or her web browser address bar – the consumer is directed to MISHAK's web servers where he or she can view, browse and purchase the company's products and services.

52. A significant and critical amount of MISHAK's business is conducted via the Internet. The company estimates that, each day, it receives in excess of thirty thousand (30,000) "hits" or visits by customers or potential customers to its Internet websites and processes hundreds of thousands of Internet transactions every year.

53. MISHAK has spent thousands of dollars in developing its website, and thousands per year in maintaining, enhancing, and updating its website. In addition, all of whom are rigorously trained and supervised.

The Business of Defendants-Search Engines

54. Internet customers who are searching for a specific company product or information, but who are searching for a specific company product or information, but who do not know the exact domain name or website address at which it may be found, may use "keywords" and/or "search engines" to locate websites which match the keywords sought by the customer. Keywords are the textual terms that a consumer enters to locate the desired website or

domain name. A search engine, such as Google, checks the keywords against its databases and produces a search results page, which lists the websites, in order of decreasing relevance with the most relevant website listed first, that match the customer's keyword search.

55. Defendants Internet search engines, which are mostly free to consumers, is the most widely-used Internet search engine in the world. It answers hundreds of millions of user searches and covers billions of web pages daily.

56. Defendants also sell a number of products and services to individuals, businesses, and educational and governmental entities. One of the programs offered to its business customers is a keyword-triggered advertising program entitled "AdWords."

57. Defendants "AdWords" programs enable advertisers to purchase or bid on keywords that generate an advertising link (known as a "Sponsored Link") to the purchaser's website. For example, MISHAK may bid on the keyword "television" through Google's "AdWords" program so that MISHAK's website will be the first, or among the first, listed "Sponsored Link" when a customer searches for the keyword "television" to find websites that sell televisions. Google posts the "Sponsored Links" on the top of and at margins of its search engine results page based on whichever keywords appear in user queries posted to Google's Internet search engine. Advertising customers then pay Defendants based on the number of Internet users who click or "hit"on these advertising links.

58. Defendants advertisers' select the keywords that will trigger their advisements, but Defendants profit every time an Internet user clicks on a "Sponsored Link" for one of Defendants advertisers'.

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