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 10 VIASAT, INC.

11 **UNITED STATES DISTRICT COURT**  
 12 **EASTERN DISTRICT OF CALIFORNIA**  
 13  
 14 **SACRAMENTO DIVISION**

15 VIASAT, INC.,  
 16 Plaintiff,  
 17 v.  
 18 PEARL NETWORKS, INC., YONDER  
 19 WIRELESS OF CALIFORNIA, LLC,  
 20 YONDER BROADBAND OF  
 21 CALIFORNIA – YUBA, LLC,  
 22 Defendants.

Case No.  
**COMPLAINT FOR SERVICE  
 MARK INFRINGEMENT; FALSE  
 DESIGNATION OF ORIGIN;  
 UNFAIR COMPETITION AND  
 FALSE ADVERTISING**  
**(JURY TRIAL DEMANDED)**

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1 Plaintiff ViaSat, Inc., for its complaint against defendants, alleges as follows:

2 **JURISDICTION AND VENUE**

3 1. This Court has subject matter jurisdiction over plaintiff's claims by  
4 virtue of 15 U.S.C. § 1121(a) and 28 U.S.C § 1338, in that plaintiff's first, second,  
5 and third claims for relief arise under federal law, specifically the Lanham Act, 15  
6 U.S.C. §§ 1114 and 1125. Count 4 is substantial and related claims arising from  
7 the same transaction and occurrence complained of in counts 1 through 3, which  
8 involve a common nucleus of operative facts, thereby giving this Court  
9 supplemental jurisdiction over this California law claim under 28 U.S.C. §§  
10 1338(b) and 1367(a).

11 2. This Court has personal jurisdiction over defendant Pearl Networks,  
12 Inc., ("Pearl Networks") because it is registered to conduct business in California,  
13 and because it presently, and at all times relevant to this action, has conducted  
14 substantial continuous commercial activities in California.

15 3. This Court has personal jurisdiction over defendants Yonder Wireless  
16 of California, LLC, and Yonder Broadband of California—Yuba, LLC, because  
17 they are registered to conduct business in California, and because they presently,  
18 and at all times relevant to this action, have conducted substantial continuous  
19 commercial activities in California.

20 4. Venue in this district is proper under 28 U.S.C. § 1391 and 28 U.S.C.  
21 § 1400(a), in that a substantial part of the events giving rise to this action occurred  
22 in this district and in this division, and confusion of purchasers is likely to occur in  
23 this district, and in this division, because defendants market and sell infringing  
24 services in this district and in this division. Moreover, on information and belief,  
25 defendants own fixed assets in this district and division that they use to sell and  
26 distribute infringing services in this district and division.

1 **NATURE OF THE ACTION**

2 5. This is an action arising under the Lanham Act, 15 U.S.C. § 1051, *et*  
3 *seq.*, as amended, for service mark infringement, false designation of origin, and  
4 related claims of unfair competition and false advertising.

5 **PARTIES**

6 6. Plaintiff ViaSat, Inc. (“ViaSat”) is a California corporation with its  
7 principal place of business in Carlsbad, California.

8 7. Defendant Pearl Networks, Inc. is a Nevada corporation that is  
9 registered to do business in California. On information and belief, Pearl Networks  
10 conducts business in the Eastern District of California, including but not limited to  
11 rural areas in the vicinity of Roseville, California and Yuba, California. On  
12 information and belief, Pearl Networks provides broadband and wireless internet  
13 services in rural California, through its direct conduct and through the conduct of  
14 its two operating companies, which are registered to do business in California:  
15 Yonder Wireless of California, LLC, and Yonder Broadband of California—Yuba,  
16 LLC.

17 8. Yonder Wireless of California, LLC (“Yonder Wireless”) purports to  
18 be a Nevada limited liability company, and is registered to do business in  
19 California. Even though Yonder Wireless purports to be a Nevada limited liability  
20 company, the entity name did not appear in the results of an online search of  
21 Nevada’s Business Entity Search (<http://nvsos.gov/sosentitysearch/>) conducted on  
22 November 14, 2011. On information and belief, Yonder Wireless is an operating  
23 company of Pearl Networks.

24 9. On information and belief, Yonder Broadband of California—Yuba,  
25 LLC (“Yonder Broadband”) purports to be an Arizona limited liability company  
26 that is registered to do business in California. Even though Yonder Broadband  
27 purports to be an Arizona limited liability company, the entity name did not appear  
28 in the results of an online search of Arizona’s Corporation List

1 (<http://starpas.azcc.gov/scripts/cgiip.exe/WService=wsbroker1/connect.p?app=names-report.p>) conducted on November 14, 2011. On information and belief, Yonder  
2 Broadband is an operating company of Pearl Networks.  
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4 10. Plaintiff is informed and believes, and on that basis alleges, that in  
5 doing the acts alleged herein, defendants were acting as the agents, servants,  
6 representatives, and/or employees of each other, and that defendants were acting  
7 within the scope of their authority as such agents, servants, and/or employees with  
8 the permission, knowledge, consent, and ratification of their principals.

### 9 **FACTS**

#### 10 **A. ViaSat's YONDER<sup>®</sup> mobile high-speed internet service**

11 11. Plaintiff ViaSat is a leader in developing and providing innovative  
12 satellite and other communications services. One of ViaSat's services is its  
13 YONDER<sup>®</sup> mobile high-speed internet service, a wireless broadband internet  
14 subscription service, which enables wireless internet access on business aircraft,  
15 commercial airliners, trains, helicopters and maritime vessels.

16 12. Since 2008, ViaSat has continuously used YONDER<sup>®</sup> as a service  
17 mark for its mobile high-speed internet service.

18 13. In addition to its common law service mark rights, ViaSat owns two  
19 federally registered service marks, registered in the United States Trademark  
20 Office on the Principal Register (U.S. Registration Nos. 3,739,881 and 3,978,158)  
21 for the YONDER and stylized YONDER service marks. Registration No.  
22 3,739,881, for the YONDER service mark, was issued on January 19, 2010, the  
23 application filing date was June 19, 2009, and notes the first use and first use in  
24 commerce as October 3, 2008. Registration No. 3,978,158, for the YONDER with  
25 a stylized design and stylized "O" and "E" was issued on June 14, 2011, the  
26 application filing date was November 12, 2010, and the service-marked content  
27 was first in use and first in use in commerce on October 3, 2008. Copies of the  
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1 certificates of registration are attached hereto as Exhibit A, and are hereby  
2 incorporated by reference.

3 14. ViaSat also owns various foreign registrations for the YONDER  
4 service marks.

5 15. ViaSat has spent considerable time, effort, and money promoting its  
6 YONDER mobile broadband service through its service marks, and in its  
7 developing customer recognition and goodwill in the service marks worldwide.

8 16. Plaintiff has exclusively used the YONDER<sup>®</sup> service marks described  
9 above to identify its mobile high-speed wireless internet service since October  
10 2008. As the exclusive owner of the service marks described above, plaintiff has  
11 the right to enforce its exclusive rights in these marks, and to sue others for  
12 infringing these marks.

13 17. Plaintiff has expended substantial money and effort advertising and  
14 promoting its YONDER<sup>®</sup> brand name through the YONDER<sup>®</sup> word mark, and the  
15 stylized YONDER<sup>®</sup> word mark. As a result of these promotional and advertising  
16 efforts, the public has come to associate the YONDER<sup>®</sup> word mark and the  
17 stylized YONDER<sup>®</sup> word mark with the high quality high-speed mobile broadband  
18 service offered by ViaSat.

19 **B. Defendants' Unlawful Conduct**

20 18. Plaintiff is informed and believes that defendants are advertising and  
21 operating businesses called Yonder Media, Yonder Wireless, and Yonder  
22 Broadband—names that infringe on plaintiff's service marks. In July 2009, Pearl  
23 Networks changed its name to Yonder Media, and began using the YONDER  
24 MEDIA, YONDER WIRELESS, and YONDER BROADBAND service marks in  
25 connection with wireless and broadband services it offers in California and other  
26 states.

1           19. Plaintiff is informed and believes that defendants are advertising and  
2 operating a business called Yonder Wireless of California, LLC, a name that  
3 infringes on plaintiff's service marks.

4           20. Plaintiff is informed and believes that defendants are operating a  
5 business called Yonder Broadband of California—Yuba, LLC, a name that  
6 infringes on plaintiff's service marks.

7           21. Defendants are each involved in the advertising, marketing,  
8 distribution, and sale of internet services under the names "Yonder Wireless" and  
9 "Yonder Media."

10           22. The services displayed, distributed, and sold by defendants are not  
11 genuine YONDER<sup>®</sup> internet services. The internet services advertised, displayed,  
12 distributed, and sold by defendants are not offered by plaintiff.

13           23. The internet services advertised, marketed, distributed, and sold by  
14 defendants are similar enough to genuine YONDER<sup>®</sup> internet services to lead to  
15 likely confusion as to the source of these services. Attached as Exhibit B is  
16 ViaSat's landing page for its genuine "Yonder Mobile High-Speed Internet  
17 Service." Attached as Exhibit C is defendants' landing page for their "Yonder  
18 wireless broadband services." Both services emphasize that their Yonder internet  
19 services are distinctive because their services reach remote areas.

20           24. Plaintiff is informed and believes, and on that basis alleges, that  
21 defendants have advertised and sold their Yonder internet services in this and other  
22 states, thereby constituting a part of and affecting interstate commerce.

23           25. After plaintiff's adoption and use of its marks on YONDER<sup>®</sup> high-  
24 speed internet services, and after plaintiff obtained the service mark registrations  
25 alleged above, defendants adopted and used substantially identical likeness of  
26 plaintiff's marks on their Yonder internet services, without plaintiff's consent, by  
27 displaying, distributing, and selling their Yonder internet services.

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1 applied such marks to advertisements intended to be used in commerce without the  
2 consent of plaintiff in violation of section 32 of the Lanham Act, 15 U.S.C. §  
3 1114(1)(b).

4 31. Defendants' use of the word "Yonder" is likely to cause confusion, to  
5 cause mistake, and/or to deceive.

6 32. Defendants' violation of 15 U.S.C. § 1114 entitles plaintiff to  
7 injunctive relief pursuant to 15 U.S.C. § 1116(a).

8 33. Plaintiff is informed and believes, and on that basis alleges, that as a  
9 result of defendants' willful infringement of plaintiff's service marks through the  
10 unauthorized use of the word "Yonder," defendants have profited and will profit in  
11 the future from the sale of Yonder internet services that use reproductions, copies,  
12 or colorable imitations of YONDER<sup>®</sup> word marks, thereby entitling plaintiff to an  
13 award of defendants' profits, damages to plaintiff in an amount to be proved at  
14 trial, enhanced damages, attorneys' fees and the costs of this action, pursuant to 15  
15 U.S.C. § 1117(a).

16 34. Defendants' acts have caused, and unless enjoined will continue to  
17 cause, irreparable injury to plaintiff. Ascertainment of damages caused by  
18 defendants' conduct would be difficult, leaving plaintiff with an inadequate  
19 remedy at law.

## 20 **SECOND CLAIM FOR RELIEF**

### 21 **(False Designation of Origin)**

22 35. Plaintiff hereby incorporates all of the preceding paragraphs, as  
23 though fully set forth herein.

24 36. By advertising, and offering for sale their Yonder internet services,  
25 infringing the YONDER<sup>®</sup> service marks, and by representing that their Yonder  
26 internet services are genuine services, defendants have engaged in false  
27 designation of origin and have made false descriptions and representations in  
28 connection with services sold in interstate commerce.



1           44. Defendants have used false or misleading descriptions of fact or  
2 representations of fact in commercial advertising or promotion, and in connection  
3 with goods or services in commercial advertising or promotion. The false  
4 descriptions or representations have misrepresented the nature, qualities, or  
5 geographic origin of defendants' services, or commercial activities, or the services,  
6 or commercial activities of another person, in violation of section 43(a) of the  
7 Lanham Act, 15 U.S.C. § 1125(a).

8           45. Defendants' acts and conduct, as alleged herein, are business practices  
9 likely to deceive or confuse the purchasing public and trade upon plaintiff's  
10 reputation, both as to the source, origin, sponsorship, and approval of the goods  
11 and services provided, and as to the affiliation, connection, or association of  
12 defendants with plaintiff. These acts constitute acts of unfair competition, false  
13 designation of origin, and false representation of affiliation, all in violation of  
14 U.S.C. § 1125(a). Plaintiff is informed and believes, and upon that basis alleges,  
15 that each of defendants' respective acts of reputation appropriation and unfair  
16 competition was willful.

17           46. Defendants' acts constitute unfair competition and false advertising in  
18 violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

19           47. As a proximate result of defendants' acts, plaintiff has suffered, and  
20 will continue to suffer, substantial damage to its reputation and goodwill, as well as  
21 diversion of trade and loss of revenues in an amount not yet ascertained.

22           48. Defendants' acts have caused, and unless enjoined will continue to  
23 cause, irreparable injury to plaintiff. Ascertainment of damages caused by  
24 defendants' conduct would be difficult, leaving plaintiff with an inadequate  
25 remedy at law.

26           49. By reason of the foregoing, plaintiff has incurred and will continue to  
27 incur attorneys' fees and other costs in connection with the prosecution of its  
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1 claims herein, which attorneys' fees and costs plaintiff is entitled to recover from  
2 defendants, and each of them, pursuant to 15 U.S.C. § 1117.

3 **FOURTH CLAIM FOR RELIEF**

4 **(Unfair Competition, False Advertising, and Deceptive**  
5 **Acts And Practices – Cal. Bus & Prof. Code §§ 17200,**  
6 **17500)**

7 50. Plaintiff hereby incorporates all of the preceding paragraphs, as  
8 though fully set forth herein.

9 51. By reason of the aforesaid acts, defendants have intentionally caused a  
10 likelihood of confusion among plaintiff's customers and the public regarding the  
11 origin of the Yonder internet services, and have diverted sales from plaintiff, all of  
12 which constitutes unfair competition against plaintiff in violation of California  
13 Business and Professions Code, section 17200.

14 52. Defendants are engaged in a pattern of unfair competition and unfair  
15 business practices, in violation of California Business and Professions Code,  
16 section 17200. The acts of defendants that are unlawful and unfair include:

- 17 a. Infringing plaintiff's YONDER<sup>®</sup> service marks; and  
18 b. Falsely implying to retail customers that defendants are  
19 authorized YONDER<sup>®</sup> internet service providers.

20 53. These acts of defendants also constitute false advertising and  
21 deceptive acts and practices in the conduct of defendants' businesses, in violation  
22 of sections 17200 and 17500 of the California Business and Professions Code.

23 54. By these actions, defendants have irreparably injured the consumer  
24 recognition and goodwill associated with plaintiff's services. Such injury will  
25 continue unless enjoined by this Court.

26 55. Defendants' acts have caused, and unless enjoined will continue to  
27 cause, irreparable injury to plaintiff. Ascertainment of damages caused by  
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1 defendants' conduct would be difficult, leaving plaintiff with an inadequate  
2 remedy at law.

3 56. By defendants' unfair competition they have illegally profited in an  
4 amount not yet ascertained. Plaintiffs are entitled to restitution from defendants  
5 and an order directing disgorgement of defendants' illicit profits.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for judgment against defendants, and each of  
8 them, as follows:

9 1. For a temporary restraining order, a preliminary injunction, and a  
10 permanent injunction restraining defendants from any further advertising,  
11 marketing, distribution, or sale of their internet services using the words "Yonder,"  
12 "Yonder Media," "Yonder Broadband," or any other word or phrase that is  
13 confusingly similar to plaintiff's YONDER<sup>®</sup> service marks;

14 2. For an order of seizure, pursuant to 15 U.S.C. §§ 1116(a),  
15 compelling defendants to surrender all labels, advertisements, marketing materials,  
16 stationary, and other materials bearing the word "Yonder," and any records  
17 documenting the advertisement, marketing, distribution or sale, including but not  
18 limited to electronic media reflecting the use of services using the word "Yonder"  
19 in connection with such activities;

20 3. For an accounting of all profits earned by defendants on the sale of  
21 internet services using the word "Yonder";

22 4. For a constructive trust on all said profits derived from defendants'  
23 infringing activities;

24 5. For compensatory damages according to proof totaling three times  
25 the amount found as profits or statutory damages, whichever is greater;

26 6. For prejudgment interest;

27 7. For attorneys' fees and costs and;

28 8. For any further relief that the Court deems just and proper.

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DATED: November 28, 2011

CHAPIN FITZGERALD SULLIVAN & BOTTINI LLP

By: s/ Kenneth M. Fitzgerald  
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury.

DATED: November 28, 2011      CHAPIN FITZGERALD SULLIVAN & BOTTINI LLP

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