VII. REQUESTED IN CHECK IF THIS IS A CLASS ACTION CHECK YES only if demanded in complaint: **DEMAND \$ COMPLAINT:** UNDER F.R.C.P. 23 JURY DEMAND: Yes 

 No VIII. RELATED CASE(S) PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". IF ANY IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND

■ SAN JOSE

DATE June 3, 2008 SIGNATURE OF ATTORNEY OF RECORD

IPCase.

	water for the		- $D$
1 2 3 4 5	HOLLIS BETH HIRE, State Bar No. 203651 WILSON SONSINI GOODRICH & ROSATI Professional Corporation 650 Page Mill Road Palo Alto, CA 94304-1050 Telephone: (650) 493-2300 LING Facsimile: (650) 493-350 LING jslafsky@wsgr.com	FILED  JUN -3 P 2: 58  CHARD W. WIEKING CLERK S. DISTRICT COURT O. DIST. OF CA. S.J.	SI 9
6 7 8	hhire@wsgr.com  Attorneys for Plaintiff LOOPT, INC.  ADR  UNITED STATES DI	STRICT COURT	
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	NORTHERN DISTRICT LOOPT, INC., a Delaware corporation, Plaintiff,  v.  SPONSORHOUSE, INC., dba LOOP'D NETWORK, a California corporation, Defendant.  Plaintiff Loopt Inc. ("Loopt" or "Plaintiff")  THE PAR  1. Loopt is a Delaware corporation with Camino Real, Mountain View, California 94040.  2. Loopt is informed and believes, and SponsorHouse, Inc. is a California corporation doin "Defendant") with its principal place of business at California 92121.	COSE NO.:  COMPLAINT FOR TRADEM INFRINGEMENT, LANHAM VIOLATIONS, UNLAWFUL BUSINESS PRACTICES AN RELATED CLAIMS  DEMAND FOR JURY TRIAL  alleges as follows:  TIES  therefore alleges, that Defendant ag business as Loop'd Network ("Loop of the complete of th	AARK I ACT D
26 27 28			
	COMPLAINT		

# 

# 

28 | b

# **JURISDICTION AND VENUE**

- 3. This action for trademark infringement, Lanham Act violations, unlawful business practices, false and misleading statements and unfair competition arises under 15 U.S.C. § 1114, 15 U.S.C. § 1125(a), California statutes and the common law.
- 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332 and 1338. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 for related state-law claims as well as original jurisdiction under 28 U.S.C. § 1338(b) because the state-law claims are joined to a substantial and related trademark claim.
- 5. This Court has personal jurisdiction over Loop'd by virtue of its transacting and doing business in this judicial district and also by virtue of its committing a tort in or directed at this judicial district. Loop'd, among other things, offers its services via an interactive commercial website available within this judicial district, and, on information and belief, attends conferences and advertises its services for use in this judicial district.
- 6. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b) because a substantial portion of the events giving rise to this Complaint occurred within this judicial district.

## INTRADISTRICT ASSIGNMENT

7. Pursuant to Civil Local Rule 3-2(c), because this action falls within one of the excepted categories, it will be assigned on a district-wide basis.

# **BACKGROUND**

## Loopt's Trademark Rights

- 8. Loopt is the leading social networking service that allows users to connect and interact with each other and with their local communities using location-based technology on their computers and mobile devices, such as cell phones.
- 9. Once a user has registered with Loopt, he or she can view on his mobile device or computer a map of the local area which displays his own location and the location of his network of friends (those friends who have also subscribed to the Loopt service and who have chosen to be a part of this network). The user can then communicate with these friends via instant

COMPLAINT

messaging or text messaging, and can view his or her friends' photographs and comments. The Loopt service also provides information about local restaurants, attractions, and other points of interest to the user, including the user's friends' favorite local attractions.

- 10. Loopt has partnered with various wireless carriers, including Boost Mobile, Sprint Nextel, and Verizon Wireless to offer its service to users on these mobile networks.
  - 11. Loopt is also available to any user of the Facebook social networking service.
- 12. Loopt has been promoting its products and services under the LOOPT® mark and trade name in the United States since at least as early as September 11, 2006. Loopt's use of the LOOPT mark and trade name has been valid and continuous since the date of first use and has not been abandoned.
- 13. Loopt owns two federal registrations for the mark LOOPT (the LOOPT Registrations), with priority based on a filing date of July 25, 2006.
- 14. Loopt is the owner of Registration No. 3,354,370 for the mark LOOPT, filed July 25, 2006 and registered December 11, 2007, for the following goods and services:

software for locating persons via global positioning or other location technology; downloadable software for use in wireless telecommunications devices, namely, software for electronic map display, travel planning and event planning; downloadable software, namely, software for displaying location and physical presence information in wireless telecommunications devices, in International Class 9;

business networking services conducted via wireless telecommunications networks and via electronic and optical communications networks, in International Class 35;

text and numeric digital wireless messaging services, in International Class 38;

online social networking services conducted via wireless telecommunications networks and via electronic and optical communications networks, in International Class 45.

COMPLAINT -3-

Loopt is the owner of Registration No. 3,372,654 for a stylized version of the 15.

LOOPT mark:

**o**pt

The application for this mark was filed June 6, 2007 and registered January 22, 2008 for the following goods and services:

software for searching, locating, navigating to, and messaging to or about certain persons, events, places, and other points of interests and to display relevant, location-informed advertisements and promotions via global positioning or other location information-based technology; downloadable software for use in wireless telecommunications devices, namely, software for electronic map display that includes display of certain individuals and points of interest, travel planning and event planning and to display relevant, location-informed advertisements and promotions and that allows users to synchronize the same with a web or internetbased application; downloadable software, namely, software for displaying location and physical presence information in wireless telecommunications devices that allows persons to synchronize the same with a web or internet-based application, in International Class 9;

business networking services conducted via wireless telecommunications networks and via electronic and optical communications networks; promoting and advertising the goods and services of others, in International Class 35;

text and numeric digital wireless messaging services, in International Class 38

online and mobile social networking services conducted via wireless telecommunications networks and via electronic and optical communications networks; social mapping services, namely, providing social networking services with location-based functions, in International Class 45.

27

26

19

20

21

22

23

24

25

28

COMPLAINT -4-

- 16. The LOOPT Registrations are valid and constitute prima facie evidence of Loopt's exclusive right to use the LOOPT mark in commerce in connection with the goods and services specified in the registrations.
- 17. Loopt promotes and offers its products and services, in part, through a website at the domain name www.loopt.com.

# <u>Defendant's Use of the LOOP'D and LOOP'D NETWORK Marks and the "loopd.com"</u> Domain Name

- 18. Loopt is informed and believes, and therefore alleges, that Loop'd uses the marks LOOP'D and LOOP'D NETWORK in connection with online social networking services.
- 19. On information and belief, Defendant's social networking service allows its users to communicate about common areas of interest, send messages to each other, and review and discuss various products, attractions, or events.
- 20. On information and belief, Loop'd did not use the LOOP'D or LOOP'D NETWORK marks in commerce before February 2007 at the earliest, after Loopt first filed an application for the LOOPT trademark in the United States and after Loopt began use of its LOOPT trademark in commerce in the United States.
- 21. On information and belief, Loop'd provides its online social networking service at the domain name www.loopd.com.
- 22. On information and belief, Loop'd filed a trademark application at the U.S. Patent and Trademark Office for the mark LOOP'D NETWORK and Design (Application Ser. No. 77/268213) (the "Loop'd Application"). The mark in the application includes a stylized version of the LOOP'D NETWORK mark in red, white, and beige with the "LOOP'D" portion of the mark in much larger type, along with a depiction of a "white man figure outlined in brown, wearing a red cap." The application claims a first use date of February 1, 2007 for the goods in International Class 9, and July 1, 2007 for the services listed in class 42. This application was published on February 12, 2008 with the following listing of goods and services:

Downloadable software for the development of websites, in International Class 9;

Computer services, namely, hosting an online community network featuring individual websites in the field of sports, athletes, apparel, sporting goods and equipment, in International Class 42.

- 23. On November 6, 2007, Loopt sent a cease and desist letter to Loop'd, demanding that Loop'd cease use of the LOOP'D trademark for Defendant's social networking service.
- 24. In a November 15, 2007 e-mail message to Loopt's counsel, Loop'd acknowledged receipt of the November 6, 2007 letter, but declined to comply with Loopt's demands.
- 25. On information and belief, since its acknowledged receipt of Loopt's letter, Loop'd has willfully continued to use the LOOP'D and LOOP'D NETWORK trademarks in connection with its online social networking service.
- 26. On information and belief, Loop'd redesigned its website and its logo in May 2008. In connection with this redesign, Loop'd began use of a logo that incorporates the stylized type of LOOP'D NETWORK mark in the Loop'd Application, but does not include the design element of the logo, namely, the figure of a man in a red cap.
- 27. In view of the near identity of Defendant's marks LOOP'D NETWORK and LOOP'D with the LOOPT mark of Loopt, for use in connection with highly similar goods and services, among other factors, Defendant's use of the LOOP'D and LOOP'D NETWORK marks is likely to cause confusion in the marketplace. The resulting confusion will cause damage to Loopt, and will injure its reputation in the trade and with the public.

# FIRST CAUSE OF ACTION

(Infringement of Registered Trademarks, 15 U.S.C. § 1114)

- 28. Plaintiff realleges and incorporates by reference paragraphs 1 though 27 above as though fully set forth herein.
  - 29. Plaintiff is the owner of the LOOPT Registrations.
- 30. Defendant has used in commerce, without Plaintiff's consent, marks that are highly similar to Plaintiff's federally registered trademarks. Taking into account the extremely

similar commercial activities of the parties, among other factors, Defendant's use of such trademarks is likely to cause confusion, deception, or mistake among consumers.

- 31. As a consequence of Defendant's infringement of the marks in the Loopt Registrations, Plaintiff is entitled to an injunction as set forth below, an order of destruction of all of Defendant's infringing materials, Defendant's profits, Plaintiff's damages, and Plaintiff's costs of action.
- 32. Defendant's willful and unauthorized use of the LOOP'D and LOOP'D NETWORK marks has damaged Plaintiff in an amount to be proved at trial. As a consequence of Defendant's willful conduct, Plaintiff has suffered irreparable harm and will continue to do so unless Defendant's unlawful conduct is enjoined.
- 33. As a consequence of Defendant's willful infringement, Plaintiff is entitled to recover from Defendant treble damages, treble profits, and Plaintiff's costs and attorneys' fees incurred in connection with this action.

# **SECOND CAUSE OF ACTION**

(False Representation and False Designation of Origin, 15 U.S.C. § 1125(a))

- 34. Plaintiff realleges and incorporates by reference paragraphs 1 through 33 above as though fully set forth herein.
- 35. Defendant's acts described above, including its use in commerce of marks that are highly similar to the LOOPT trademark, are likely to cause confusion, mistake, or deception as to the source, sponsorship, affiliation or approval of Defendant's services. Further, Defendant's acts described above constitute false representations of fact that are likely to cause confusion, mistake, or deception as to the source, sponsorship, affiliation, or approval of Defendant's services.
- 36. As a consequence of Defendant's violation, Plaintiff is entitled to an injunction as set forth below, an order of destruction of all of Defendant's infringing materials, Defendant's profits, Plaintiff's damages and Plaintiff's costs of action.

	1	
	2	
	3	
	4	
	5	
	6	
	7	
	8	
	9	
1	0	
1	1	
1	2	
1	3	
1	4	
1	5	
1	6	
1	7	
1	8	
1	9	
2	0	
2	1	
2	2	
2	3	
2	4	
2	5	
2	6	
2	7	

37. As a consequence of Defendant's willful infringement, Plaintiff is entitled to recover from Defendant treble damages, treble profits, and Plaintiff's costs and attorneys' fees incurred in connection with this action.

# THIRD CAUSE OF ACTION

(Refusal of Trademark Application)

- 38. Plaintiff realleges and incorporates by reference paragraphs 1 through 37 as though fully set forth herein.
- 39. Plaintiff's use of and application for the LOOPT mark is prior to Defendant's use of and application for the mark in the Loop'd Application.
- 40. The Loop'd Application is likely to be confused with Plaintiff's LOOPT trademark, because the marks are confusingly similar in appearance, sound, and meaning, and convey a confusingly similar commercial impression.
- 41. The goods and services in the Loop'd Application are identical or highly related to Plaintiff's goods and services offered in connection with the LOOPT mark, and use of LOOP'D NETWORK mark on such goods and services would so nearly resemble Plaintiff's use as to be likely to cause confusion, mistake, or deception
- 42. On information and belief, Defendant has ceased use of the mark in the Loop'd Application.
- 43. On information and belief, Defendant has ceased use of the mark in the Loop'd Application, without an intention to resume use.
- 44. On information and belief, Defendant has abandoned the mark in the Loop'd Application.
- Application, as the mark in the Loop'd Application is highly similar to Plaintiff's LOOPT mark and the marks in the Loopt Registrations, for use in connection with highly similar products and services. As such, confusion in the trade and in the public is likely to result, injuring Plaintiff's reputation in the trade and with the public.

1	46.	Accordingly, Plaintiff is entitled to an order from this Court refusing registration		
2	of the Loop'd	Application. With respect to this order, Plaintiff requests certification to the		
3	Director of the U.S. Patent and Trademark Office instructing the Director to make the			
4	appropriate entries upon the U.S. Patent and Trademark Office's records.			
5	FOURTH CAUSE OF ACTION			
6	(Violation of Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d))			
7	47.	Plaintiff realleges and incorporates by reference paragraphs 1 through 46 as		
8	though fully set forth herein.			
9	48.	Defendant registered the domain name www.loopd.com and uses the domain		
10	name as the site of its online social networking service.			
11	49.	Defendant has registered and used a domain name that is confusingly similar to		
12	Plaintiff's LOOPT trademark.			
13	50.	Defendant did not use the domain name www.loopd.com in connection with the		
14	bona fide offe	ering of any goods or services before Plaintiff developed enforceable rights in the		
15	LOOPT trademark.			
16	51.	Defendant does not make bona fide noncommercial or fair use of the LOOPT		
17	trademark at www.loopd.com.			
18	52.	Defendant intends to divert consumers seeking Plaintiff's products and services to		
19	its own social networking website at www.loopd.com by creating a likelihood of confusion as to			
20	the source, sponsorship, affiliation or endorsement of the website at www.loopd.com.			
21	Defendant's acts are for commercial gain and harm the goodwill Plaintiff has earned in its			
22	LOOPT trade	emarks.		
23	53.	Defendant's acts described above demonstrate bad faith intent to profit from		
24	Plaintiff's LOOPT mark.			
25	54.	As a consequence, Plaintiff is entitled to an injunction as set forth below,		

26

28

Defendant's profits, Plaintiff's damages, statutory damages, and costs of action.

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 II

28

55. Because this is an exceptional case, involving calculated and willful misconduct by Defendant, Plaintiff is entitled to recover treble damages, treble profits and attorneys' fees against Defendant.

# FIFTH CAUSE OF ACTION

(Unlawful Business Practices – Cal. Bus. & Prof. Code § 17200 et seq.)

- 56. Plaintiff realleges and incorporates by reference paragraphs 1 through 55 as though fully set forth herein.
- 57. Defendant's use of a trademark and domain name that is confusingly similar to those used by Plaintiff constitutes unfair, deceptive, untrue and misleading advertising.
- 58. Defendant's actions complained of herein are unlawful, unfair, or fraudulent business acts or practices, constituting unfair competition in violation of California Business and Professions Code §17200 et seq.
- 59. Defendant's acts described above have greatly and irreparably damaged Plaintiff and will continue to damage Plaintiff unless enjoined by this Court. Accordingly, Plaintiff is entitled to an injunction under California Business and Professions Code §17203, as well as restitution and disgorgement of Defendant's profits.

## SIXTH CAUSE OF ACTION

(False Advertising – California Business & Professions Code §17500 et seq.)

- 60. Plaintiff realleges and incorporates by reference paragraphs 1 through 59 as though fully set forth herein.
- NETWORK are disseminated to and received by the public in California. Defendant has engaged in these actions with the intent to provide its services, and/or to induce the public to enter into an obligation relating to such services. Such actions (which are likely to deceive the public as to the source, sponsorship, affiliation, or approval of Defendant's products) constitute unfair, deceptive, untrue or misleading advertising under California Business and Professions Code §17500, and also amount to a separate and further violation of California Business and Professions Code §17200 et seq.

COMPLAINT -10-

	_
	3
	4
	5
	6
	7
	8
	9
1	0
1	1
1	2
1	3
1	4
1	5
1	6
1	7
1	8
1	9
2	0
2	1
2	2
2	3
2	4
2	5
2	6
2	7
2	8

2

62. Defendant's acts described above have greatly and irreparably damaged Plaintiff and will continue to damage Plaintiff unless enjoined by this Court. Accordingly, Plaintiff is entitled to an injunction under California Business and Professions Code §17535, as well as restitution and disgorgement of Defendant's profits.

# **SEVENTH CAUSE OF ACTION**

(Common Law Unfair Competition)

- 63. Plaintiff realleges and incorporates by reference paragraphs 1 through 62 as though fully set forth herein.
- 64. Defendant's acts described above constitute unfair competition in violation of the common law of the State of California.

# **EIGHTH CAUSE OF ACTION**

(Common Law Trademark Infringement)

- 65. Plaintiff realleges and incorporates by reference paragraphs 1 through 64 as though fully set forth herein.
- 66. Defendant's acts described above constitute willful trademark infringement under the common law of the State of California.
- 67. Defendant's acts described above have greatly and irreparably damaged Plaintiff and will continue to damage Plaintiff unless enjoined by this Court. Plaintiff is entitled to an injunction as set forth below, as well as damages to be proved at trial.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment in its favor and against Defendant as follows:

a. That the Court preliminarily and permanently enjoin Defendant, its subsidiaries, parent and affiliated companies, successors, assigns, officers, directors, agents, partners, servants, employees, and attorneys of those companies or individuals, and all others in active concert or participation with Defendant, from using the LOOP'D and LOOP'D NETWORK marks, the www.loopd.com domain name,

COMPLAINT -11-

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

and any other mark, word, name or domain name that is likely to cause confusion with Plaintiff's trademarks:

- b. That the Court require Defendant and all others holding by, through or under them, to deliver up for destruction all products, labels, signs, prints, packages, wrappers, receptacles, advertisements, website content, television advertisements and other electronic forms of data in its possession or control bearing the LOOP'D mark, the LOOP'D NETWORK mark and related trademarks, the www.loopd.com domain name, and any other variation of Plaintiff's marks;
- c. That the Court order the Director of the U.S. Patent and Trademark Office to refuse registration of the Loop'd Application;
- d. That the Court order Defendant to take all actions necessary to transfer to Plaintiff all domain names registered by Defendant containing Plaintiff's trademarks or marks confusingly similar thereto, including the www.loopd.com domain name;
- e. That the Court order Defendant to pay the maximum statutory damages available for the registration and/or use of the www.loopd.com domain name;
- f. That the Court order Defendant, and all others enjoined in this action, jointly and severally, to file with the Court and serve on Plaintiff an affidavit setting forth in detail the manner and form in which they have complied with the terms of the injunction;
- g. That the Court require Defendant to account for and pay to Plaintiff treble the amount of all profits derived by Defendant as a result of the acts alleged in this action;
- h. That the Court order Defendant to pay to Plaintiff treble the amount of all damages incurred by Plaintiff by reason of Defendant's acts alleged in this action;
- i. That the Court award Plaintiff the costs of this action, together with reasonable attorneys' fees and disbursements; and
- j. That the Court grant such other and further relief as the Court deems just and equitable.

COMPLAINT -12-

Dated: June 3, 2008 WILSON SONSINI GOODRICH & ROSATI Professional Corporation

By: John L. Slafsky Hollis Beth Hire

Attorneys for Plaintiff LOOPT, INC.

# **DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby demands a jury trial of

all issues triable by a jury.

Dated: June 3, 2008

WILSON SONSINI GOODRICH & ROSATI Professional Corporation

By:

John L. Slafsky Hollis Beth Hire

Attorneys for Plaintiff LOOPT, INC.