

CIVIL COVER SHEET

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS
VIRGIN AMERICA, INC., a Delaware Corporation.
(b) County of Residence of First Listed Plaintiff San Mateo County, California
(EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorney's (Firm Name, Address, and Telephone Number)
Rodger R. Cole Mashhood Rassam
FENWICK & WEST LLP FENWICK & WEST LLP
801 California Street 801 California Street
Mountain View, CA 94041 Mountain View, CA 94041
(650)988-8500 (650)988-8500

DEFENDANTS
ADRANTS PUBLISHING, LLC, a Massachusetts limited liability company; STEVE HALL, an individual; ANGELA NATIVIDAD, an individual; and NINA ALDREDGE, an individual.
County of Residence of First Listed Defendant Middlesex County, Massachusetts
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)
Citizen of This State PTF DEF
Citizen of Another State PTF DEF
Citizen or Subject of a Foreign Country PTF DEF
Incorporated or Principal Place of Business In This State PTF DEF
Incorporated and Principal Place of Business In Another State PTF DEF
Foreign Nation PTF DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Lanham Act, 15 U.S.C. §§ 1051-1127, California Business and Professions Code §§ 14330 and 17500 et seq., and California Civil Code §§ 44, et seq.
Brief description of cause: COMPLAINT FOR TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN AND FALSE AND DECEPTIVE ADVERTISING, TRADEMARK DILUTION, FALSE AND MISLEADING STATEMENTS, DILUTION IN VIOLATION OF CALIFORNIA LAW, AND DEFAMATION.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS To be determined at trial

CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

SAN FRANCISCO/OAKLAND

SAN JOSE

DATE  
01/26/2009

SIGNATURE OF ATTORNEY OF RECORD



COPY

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
MOUNTAIN VIEW

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RODGER R. COLE (CSB No. 178865)  
rcole@fenwick.com  
MASHHOOD RASSAM (CSB No. 240834)  
mrassam@fenwick.com  
FENWICK & WEST LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041  
Telephone: (650) 988-8500  
Facsimile: (650) 938-5200

Attorneys for Plaintiff  
Virgin America, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CV 09

09337

VIRGIN AMERICA, INC., a Delaware Corporation,

Plaintiff,

vs.

ADRANTS PUBLISHING, LLC, a Massachusetts limited liability company; STEVE HALL, an individual; ANGELA NATIVIDAD, an individual; and NINA ALDREDGE, an individual,

Defendants.

Case No.:

**COMPLAINT FOR TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN AND FALSE AND DECEPTIVE ADVERTISING, TRADEMARK DILUTION, FALSE AND MISLEADING STATEMENTS, DILUTION IN VIOLATION OF CALIFORNIA LAW, AND DEFAMATION**

**DEMAND FOR JURY TRIAL**

**CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

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09 JUL 26 PM 2:19  
U.S. DISTRICT COURT  
SAN FRANCISCO, CALIFORNIA

1 Plaintiff Virgin America, Inc. (“Virgin America” or “Plaintiff”) hereby alleges for its  
2 claims for relief against Defendants Adrants Publishing, LLC (“Adrants Publishing”), Steve Hall  
3 (“Hall”), Angela Natividad (“Natividad”) and Nina Aldredge (“Aldredge”) (collectively,  
4 “Defendants”) on personal knowledge as to its own actions and on information and belief as to  
5 the actions of others, as follows:

6 **INTRODUCTION**

7 Virgin America brings this action for trademark and trade name infringement, false  
8 designation of origin and false and deceptive advertising, trademark dilution, false and misleading  
9 statements, and defamation all arising in connection with Defendants’ use of the trade name and  
10 mark “Virgin America.” Specifically, on January 18, 2009 Plaintiff discovered on the website  
11 <http://adrants.com> (“Adrants.com”), published by Adrants Publishing, a false Virgin America  
12 advertisement at URL [http://www.adrants.com/2009/01/the-hudson-crash-just-one-more-](http://www.adrants.com/2009/01/the-hudson-crash-just-one-more-reason.php)  
13 [reason.php](http://www.adrants.com/2009/01/the-hudson-crash-just-one-more-reason.php). The advertisement consisted of a photograph of the crash of US Airways flight 1549  
14 from January 15, 2009 depicted under the heading “The Hudson Crash: Just One More Reason to  
15 Fly Virgin.” The posting had an express assertion by Adrants Co-Editor Natividad about the  
16 apparent validity of the Virgin America advertisement. However, the depicted photograph was  
17 not a Virgin America advertisement and the advertisement was in no way sponsored by or  
18 affiliated with Virgin America. Defendants’ posting of the false advertisement on the  
19 Adrants.com website was likely to cause consumer confusion as to source, affiliation or  
20 sponsorship; was likely to and tended to dilute and tarnish the distinctive nature of and reputation  
21 ascribed to Virgin America’s famous name and trademark; and was likely to generate the false  
22 belief among consumers that Virgin America had sponsored, endorsed, was affiliated with, and  
23 supported Defendants and Adrants.com; all in violation of Virgin America’s rights pursuant to the  
24 Lanham Act, 15 U.S.C. §§ 1051-1127, California Business and Professions Code §§ 14330 and  
25 17500 *et seq.*, California Civil Code §§ 44, *et seq.*, and the common law.

**THE PARTIES**

1  
2 1. Plaintiff Virgin America is a corporation organized and existing under the laws of  
3 Delaware, is registered to do business in the State of California, and has its principal place of  
4 business at 555 Airport Blvd., Burlingame, CA 94010.

5 2. Virgin America is informed and believes, and on that basis alleges, that Adrants  
6 Publishing is, and at all relevant times was, a limited liability corporation existing under the laws  
7 of Massachusetts, and has its principal place of business at 27 Bryanwood Lane, Groton, MA  
8 01450. Adrants Publishing publishes the website Adrants.com.

9 3. Virgin America is informed and believes, and on that basis alleges, that Defendant  
10 Hall is a natural person residing in the state of Massachusetts.

11 4. Virgin America is informed and believes, and on that basis alleges, that Defendant  
12 Natividad is a natural person residing in the state of California.

13 5. Virgin America is informed and believes, and on that basis alleges, that Defendant  
14 Aldredge is a natural person residing in the state of New York.

**JURISDICTION AND VENUE**

15  
16 6. This Court has jurisdiction over this action pursuant to 15 U.S.C. §§ 1121  
17 (trademarks, trade and corporate names) *et seq.*, and 28 U.S.C. §§ 1331 (federal question), 1338  
18 (trademarks), and 1367 (supplemental jurisdiction).

19 7. Venue is proper in this district pursuant to 28 U.S.C. §1391(b). Plaintiff Virgin  
20 America is headquartered and operates its airline in this district, and a substantial part of the  
21 events and injury giving rise to the claims set forth herein occurred in this district. On  
22 information and belief, Defendants impermissibly used trademarks and trade names owned by  
23 Virgin America via the Adrants.com website in this district.

**INTRADISTRICT ASSIGNMENT**

24  
25 8. Assignment of this action to the San Francisco Division is proper under Civil  
26 Local Rules 3-2(c) and 3-2(d), in that, on information and belief, a substantial part of the events  
27 giving rise to the claims alleged herein occurred in Walnut Creek and in the County of Contra  
28 Costa.

1 **STATEMENT OF FACTS**

2 **The Parties**

3 9. Virgin America is a California-based airline that began service in August 2007,  
4 and provides its passengers with high-quality award winning service between major metropolitan  
5 cities in the United States.

6 10. Adrants Publishing publishes the website Adrants.com. On information and  
7 belief, Adrants.com is a well known and popular website that purports to provide marketing and  
8 advertising news online and in the form of a daily email newsletter.

9 11. On information and belief, Defendants Hall and Natividad are co-editors of  
10 Adrants.com.

11 **Virgin America's Name and Mark**

12 12. Plaintiff has used the Virgin America name and logo (hereinafter, "VIRGIN  
13 AMERICIA NAME AND MARK") and has been using this well-known mark since 2007.

14 13. Virgin America's success and recognition as a new, high-quality airline is well-  
15 documented. Indeed, Virgin America has captured a list of travel industry best-in-class awards,  
16 including: "Best Domestic Airline" by *Condé Nast Traveler*; "Best Domestic Airline" in *Travel +*  
17 *Leisure* World's Best Awards; and No. 1 among U.S. carriers for quality in First Class in Zagat's  
18 2007 and 2008 Global Airlines Survey.

19 14. Since 2007, Virgin America has spent millions of dollars to market, advertise and  
20 otherwise promote the Virgin America brand, trade name, trademark and services.

21 15. As a consequence of Virgin America's success and extensive sales, marketing, and  
22 advertising in interstate commerce, the VIRGIN AMERICA NAME AND MARK have become  
23 well known among the general consuming public as identifying designations for Virgin  
24 America's products and services. Virgin America has, at great expense and effort, developed  
25 tremendous goodwill, recognition and fame in the VIRGIN AMERICA NAME AND MARK.  
26 As a result, the VIRGIN AMERICA NAME AND MARK have become famous and valuable  
27 assets of Virgin America, and principal symbols of its extensive goodwill.  
28

1           16.     The Virgin American name and logo are a registered trademarks and/or registered  
2 service marks of Virgin America in the United States. Virgin America owns the federal  
3 trademark registrations and/or common law rights on the VIRGIN AMERICA NAME AND  
4 MARK. This federal registration is valid, in full force and effect, and constitutes evidence of  
5 Plaintiff's exclusive right to use the VIRGIN AMERICA NAME AND MARK in connection  
6 with goods and services set forth in the registration.

7     **Fabricated Virgin America Advertisement**

8           17.     On information and belief, on January 15, 2009 at 6 p.m. EST, Defendant  
9 Natividad received from Defendant Aldredge a false Virgin America advertisement which she  
10 posted on the Adrants Publishing website.

11           18.     The advertisement, which was posted on Adrants.com at URL  
12 <http://www.adrants.com/2009/01/the-hudson-crash-just-one-more-reason.php>, consisted of a  
13 photograph of the crash of US Airways flight 1549 on January 15, 2009 depicted under the  
14 heading "The Hudson Crash: Just One More Reason to Fly Virgin."

15           19.     In the explanation from Adrants Publishing that accompanied the posting,  
16 defendant Natividad explained that "we've seen Virgin turn ugly situations to its advantage  
17 before, making it [the fake advertisement] very much in keeping with the Virgin brand persona.  
18 The only thing saving the tribute from being in terrifically bad taste is the fact no one lost his or  
19 her life in the crash. So woot! -- slather your big reds all over those news shots, V."

20           20.     Defendant Natividad went on to add in another comment below this explanation  
21 that "we've received legitimate ads this way before: civilian email, with little or no explanation  
22 in the body. Just sayin'."

23           21.     Nothing could be further from the truth. The depicted photograph was not a  
24 Virgin America advertisement and the advertisement was in no way sponsored by or affiliated  
25 with Virgin America. In fact, Virgin America deplors the fact that anyone would try to take  
26 advantage of the crash of flight 1549.

27           22.     Virgin America employees learned of this false advertisement at 11:23 p.m. on  
28 January 17, 2009.





1 suspect from the get go and didn't mean to mislead or misrepresent. So we'll state it clearly now:  
2 the ad is a spoof. It's not real. Virgin America had nothing to do with its creation.”

3 27. At 8:11 p.m. Mr. Cole sent Defendant Hall another email stating: “Dear Mr. Hall -  
4 - Thank you for posting the ‘UPDATE’ on your website at [http://www.adrants.com/2009/01/the-](http://www.adrants.com/2009/01/the-hudson-crash-just-one-more-reason.php)  
5 [hudson-crash-just-one-more-reason.php](http://www.adrants.com/2009/01/the-hudson-crash-just-one-more-reason.php). However, given the earlier portrayal of the image as an  
6 actual Virgin America advertisement, Adrants must remove the Virgin America image attached to  
7 the US Airways crash to mitigate the damage Virgin America has suffered and continues to suffer  
8 for Adrants' posting. Please take down the posting as soon as possible and confirm once you have  
9 done so. If Adrants chooses not to remove the posting, Virgin America will be forced to escalate  
10 the issue.”

11 28. On information and belief, the false advertisement was not removed from the  
12 Adrants.com website until sometime on the morning of January 19, 2009.

13 29. Following the removal of this posting there was no retraction or other comment  
14 from Adrants despite the false ad having been posted on the world wide internet for over three  
15 days (72 hours).

16 30. To date, Defendants have not admitted fault for posting the false ad, have not  
17 provided Virgin America any information regarding its origins and have not informed Virgin  
18 America how widely the ad was disseminated.

19 **FIRST CLAIM FOR RELIEF**  
20 **(Infringement of Federally Registered Trademarks and Service Marks)**  
21 **[Violation of 15 U.S.C. § 1114]**

22 31. Plaintiff realleges and incorporates paragraphs 1-30 above into this Claim for  
23 Relief as if set forth herein.

24 32. Defendants posted or caused to be posted on the Adrants.com website a false  
25 advertisement using the federally registered VIRGIN AMERICA NAME AND MARK.

26 33. On information and belief, Defendants knew or by the exercise of reasonable care  
27 should have known that depiction of the VIRGIN AMERICA NAME AND MARK in the false  
28 advertisement on the Adrants.com website would cause confusion, mistake, or deception among  
customers or potential customers of Virgin America and the public.





1 the purchasing public. On information and belief, Defendants knew or should have known that  
2 their conduct was likely to mislead the public.

3 48. The foregoing actions of Defendants violate Virgin America's rights under  
4 California Business & Professions Code sections 17500 *et seq.* and, on information and belief,  
5 have been knowing, deliberate, willful, intended to cause mistake and to deceive, and in disregard  
6 of Plaintiff's rights.

7 49. As a direct and proximate result of Defendants' false and misleading statements in  
8 violation of California Business and Professions Code sections 17500 *et. seq.*, Plaintiff has  
9 suffered and will continue to suffer great and irreparable harm.

10 **FIFTH CLAIM FOR RELIEF**  
11 **(Dilution in Violation of California Law)**  
12 [Cal. Bus. and Prof. Code § 14330]

13 50. Plaintiff realleges and incorporates paragraphs 1-49 alleged above into this Claim  
14 for Relief as if set forth herein.

15 51. Defendants, by use of the VIRGIN AMERICA NAMES AND MARKS have  
16 injured and will continue to injure Virgin America's business reputation, and have diluted and  
17 will continue to dilute the distinctive quality of the VIRIGN AMEIRCA NAMES AND MARKS  
18 in violation of California Business and Professions Code section 14330.

19 52. As a direct and proximate result of Defendants' dilution in violation of California  
20 Business and Professions Code sections 14330, Plaintiff has suffered and will continue to suffer  
21 great and irreparable harm.

22 **SIXTH CLAIM FOR RELIEF**  
23 **(Defamation)**  
24 (Cal. Civil Code §§ 44, *et seq.*)

25 53. Plaintiff realleges and incorporates paragraphs 1-52 alleged above into this Claim  
26 for Relief as if set forth herein.

27 54. The fake advertisement posted on Adrants.com and the accompanying  
28 commentary by defendant Natividad contain unprivileged, false, misleading and disparaging  
statements as described above.

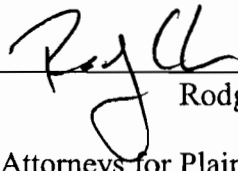


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5. Virgin America be awarded such other relief as the Court deems just and proper.

Dated: January 26, 2009

FENWICK & WEST LLP

By:   
Rodger R. Cole  
Attorneys for Plaintiff  
VIRGIN AMERICA, INC.

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
MOUNTAIN VIEW

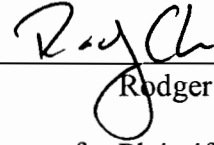
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims.

Dated: January 26, 2009

FENWICK & WEST LLP

By:



Rodger R. Cole

Attorneys for Plaintiff  
VIRGIN AMERICA, INC.

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
MOUNTAIN VIEW

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