

EXHIBIT A

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BE IN, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BE IN, INC., a New York corporation,

Plaintiff,

v.

**GOOGLE INC., a California corporation,
YOUTUBE, LLC, a Delaware limited liability
company, and GOOGLE UK LTD., a private
limited company registered in England and
Wales,**

Defendants.

CASE NO. 5:12-CV-03373-LHK

**SECOND AMENDED COMPLAINT FOR
COPYRIGHT INFRINGEMENT,
MISAPPROPRIATION OF TRADE
SECRETS, BREACH OF IMPLIED
CONTRACT AND BREACH OF
CONTRACT**

DEMAND FOR JURY TRIAL

1 Plaintiff BE IN, INC. (“Be In” or “Plaintiff”), by and through its counsel of record, for its
2 Second Amended Complaint against Defendants Google Inc. (“Google”), YouTube LLC
3 (“YouTube”), and Google UK Ltd. (“Google UK”) hereby alleges as follows:

4 **I. NATURE OF ACTION**

5 1. Plaintiff, Be In, brings this action to halt the brazen and continued copying, use, and
6 misappropriation of its valuable trade secrets and intellectual property rights. Be In is the creator and
7 developer of CamUp, an award-winning social entertainment consumption platform that allows a
8 group of friends to simultaneously watch, listen, chat and collaborate around shared videos, music,
9 and other media, such as educational content and documents, in a real-time, trusted environment.
10 Since 2007, Be In has devoted extensive time, resources and ingenuity to creating the unique design,
11 technology and infrastructure for its platform, as well as proprietary strategies for integrating that
12 platform into established content, social and media platforms.

13 2. In May, 2011, approximately two months after Be In publicly unveiled CamUp at
14 South By Southwest (“SXSW”) in Austin, Texas—the same industry-leading interactive technology
15 conference that, in 2007, was instrumental in the launch of Twitter—Be In met with a high-level
16 Google executive to discuss Be In’s vision and strategy for how the CamUp platform could transform
17 Google’s business with respect to social media, advertising and analytics. After insisting on a non-
18 disclosure agreement, and being assured that Be In was protected from any unauthorized use of its
19 confidential, proprietary business strategies or platform, Be In disclosed to Google during the
20 meeting, in detail, its strategy for, among other things, using CamUp’s platform to implement a social
21 entertainment strategy for YouTube and other Google products, and thus to create community and
22 social context around Google’s vast, anonymous user base. CamUp’s proprietary strategy and
23 business plans promised a new and ingenious opportunity for Google to compete, as it had been
24 unsuccessfully attempting to do, with Facebook in the arena of social media and analytics.

25 3. Google responded enthusiastically to CamUp and Be In’s social entertainment
26 integration strategy, and asked Be In to provide even more information, in writing, following the
27 meeting. The next day, Be In emailed Google a summary of its proprietary social integration
28 strategy. After Be In shared its strategic roadmap, Google abruptly terminated all communications

1 with Be In, refusing to respond to e-mails seeking to arrange follow-up steps discussed during their
2 meeting.

3 4. In June, 2011, approximately one and a half months after Plaintiff's disclosure,
4 Google launched Google+, its latest and largest attempt to launch a viable social network to rival
5 Facebook. As part of Google+, Google launched "Hangouts"—an integrated social entertainment
6 consumption platform that bears striking similarity to CamUp. Indeed, Hangouts is virtually identical
7 to CamUp. It allows groups of friends from within the Google+ social network to "hangout" together
8 in a familiar online room, simultaneously watching, listening, chatting and collaborating around
9 shared media and video. Before Google launched Hangouts, no company other than CamUp had
10 created this type of social entertainment consumption platform.

11 5. The creative design of Hangouts is strikingly similar to CamUp's unique design
12 elements in every respect—design, layout, look and feel, selection and arrangement of elements,
13 format, tag lines, and color scheme—leaving no doubt that Google slavishly copied the CamUp
14 platform in a hurried attempt to bolster its new social network, Google+. Hangouts is reportedly, by
15 far, the most popular feature of Google+ today, and business journalists have written repeatedly about
16 the critical importance of Hangouts to driving and sustaining the success of Google+.

17 6. Google not only copied Be In's unique entertainment consumption platform—the only
18 platform of its kind in existence at the time—Defendants also implemented, and are continuing to
19 implement on a step-by-step basis, each of the proprietary business strategies Be In disclosed to
20 Google in confidence in May, 2011. Among other things, Defendants utilized Be In's social
21 entertainment integration strategy, first integrating Hangouts (and with it, Google's fledgling social
22 network, Google+) with YouTube via Be In's social plug in strategy, and then progressing to
23 integrate Hangouts with Google Docs, and later, third-party apps—thus building a critical social
24 consumption platform around Google's previously asynchronous products—precisely the strategy
25 that was disclosed and detailed by Be In in confidential communications with Google. Upon
26 information and belief, Defendants intend to continue to utilize this and other confidential,
27 proprietary business and marketing strategies developed by Be In in connection with its platform,
28

1 CamUp, for the benefit of Google and Hangouts, Google's competing social entertainment
2 consumption platform.

3 7. In view of Defendants' misappropriation of Plaintiff's trade secrets, infringement of
4 Plaintiff's copyrights in CamUp, and the other wrongful conduct set forth herein, Plaintiff is entitled
5 to preliminary and permanent injunctive relief, enhanced damages and attorney's fees.

6 **II. PARTIES**

7 8. Be In, Inc. is a corporation organized and existing under the laws of the State of New
8 York with its principal place of business in New York City, New York.

9 9. Google, Inc. is a corporation organized and existing under the laws of the State of
10 Delaware with its principal place of business in Mountain View, California.

11 10. YouTube, LLC is a Delaware limited liability company with its principal place of
12 business in San Bruno, California. Upon information and belief, YouTube, LLC is a subsidiary of
13 Google, Inc. whose members are citizens of Delaware and/or California.

14 11. Upon information and belief, Google UK Ltd. is a company incorporated in England
15 and Wales, and is a wholly-owned subsidiary of Google, Inc. Upon information and belief, Google
16 UK Ltd. provides marketing, sales, and development services to Google and its other subsidiaries.

17 **III. JURISDICTION AND VENUE**

18 12. This Court has exclusive subject matter jurisdiction over Plaintiff's claims under the
19 Copyright Act pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a) and (b).

20 13. This Court also has supplemental jurisdiction over Plaintiff's state law claims under
21 28 U.S.C. § 1367, because they are so related to the federal claims that they form part of the same
22 case or controversy and derive from a common nucleus of operative facts.

23 14. This Court also has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1332 by
24 virtue of the diversity of the parties, and because the amount in controversy exceeds \$75,000.00.

25 15. This Court has personal jurisdiction over Defendants because Defendants' principal
26 places of business are in this District, or, upon information and belief, Defendants transact, operate,
27 and solicit business in this District. Additionally, Defendants purposefully directed their activities at
28

the forum, thereby invoking the benefits and protections of its laws; the claims arise out of or relate to Defendant's forum-related activities; and the exercise of jurisdiction is reasonable.

16. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c)(3) because Google UK is, upon information and belief, an alien defendant and can be sued in any District, Google and YouTube's principal place of business is Mountain View, California, located within this judicial district, and each of these Defendants are residents of the State of California. Venue is also proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this District.

IV. INTRADISTRICT ASSIGNMENT

17. Pursuant to Civil L.R. 3-2(c), this action should be assigned to the San Jose district because this action arises in Santa Clara County. *See also* Civil L.R. 3-2(e).

V. GENERAL ALLEGATIONS

The Development Of CamUp

18. In 2007, Be In co-founders Elio D'Anna, Joseph D'Anna and Elia D'Anna conceived an online platform that would facilitate real-time, simultaneous social entertainment consumption: an online space that would bring multiple friends together in an interactive, but also familiar, environment centered around musical collaboration and media sharing—a platform they believed could transform how people engage with one another and experience the Internet.

19. In the years that followed, Be In would invest countless hours and substantial resources and ingenuity in bringing this innovative concept to life. Be In has invested over two million dollars in developing and refining its co-founders' vision of an online platform that would combine music collaboration, shared entertainment consumption and social interaction in an intimate online setting.

20. In 2009, Be In completed the development of the first beta version of its platform, which allowed up to six individuals to simultaneously collaborate in a virtual music studio, around the same shared media, using standard webcams and/or chat—a concept that required extensive technical and creative vision and ingenuity. Be In continued to make improvements to its platform and, in 2010, completed the development of the second and third beta versions, which, among other

1 features, allowed up to 10 people to simultaneously consume and create music, and other media,
2 without compromising the entertainment values or the intimacy of the shared social experience.

3 21. Beginning in 2008, and continuing through 2009 and 2010, Be In developed
4 proprietary strategies for implementing its platform with content partners in unique ways, and for
5 driving value and monetization opportunities to these content providers and CamUp.

6 22. Recognizing the vast stand-alone potential of the social entertainment consumption
7 features of its platform, in late 2010, Be In made the decision to separate its existing platform into
8 two distinct online platforms: GigIn (a virtual music studio) and CamUp (a social entertainment
9 consumption platform).

10 23. As of early 2011, both GigIn and CamUp were non-public platforms accessible only
11 by designated persons through a specific internal domain with a proprietary login.

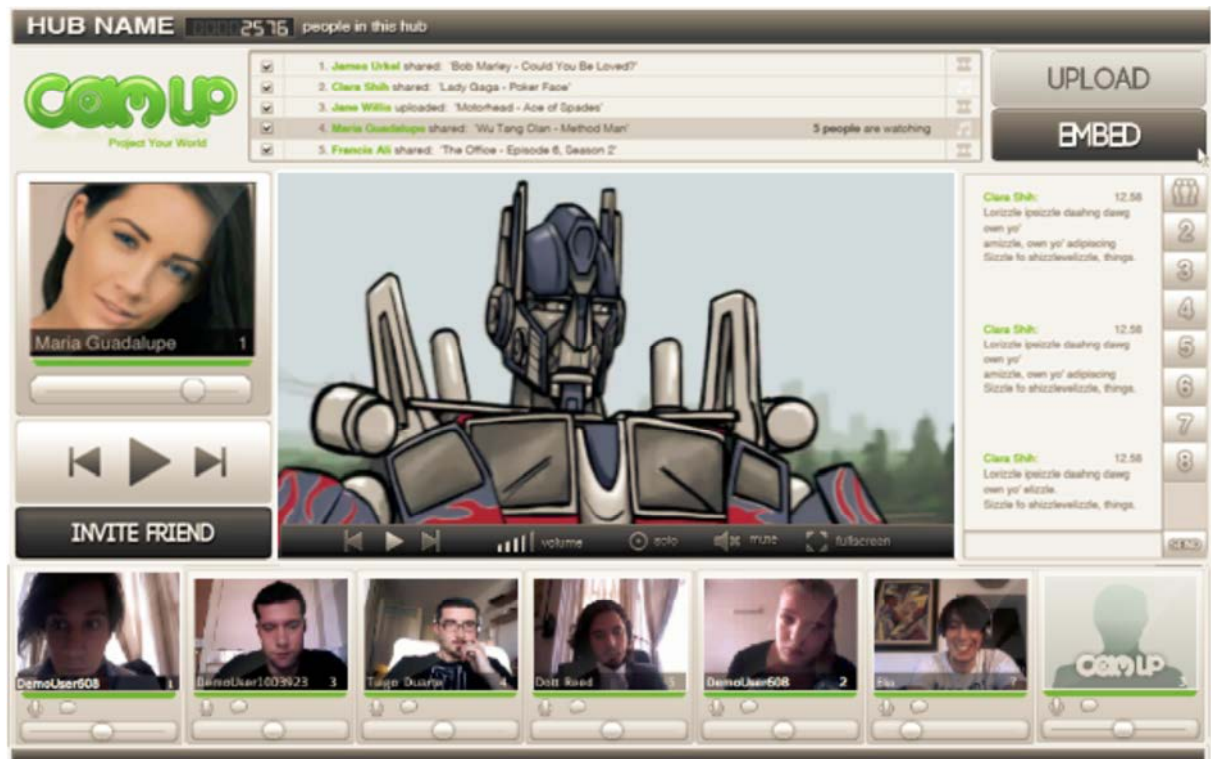
12 **CamUp's Public Release and Unique Expressive Elements**

13 24. In March 2011, Be In publicly unveiled GigIn and CamUp for the first time at SXSW
14 Interactive—an annual interactive media conference held in Austin, Texas that is widely seen in the
15 technology industry as a launching pad for innovative online platforms and applications. SXSW
16 Interactive played a pivotal role in the success and launch of Twitter and FourSquare, for example.

17 25. CamUp was one of a kind and offered something that no company had ever achieved.
18 While other companies had developed video chat services, social media services, or online
19 entertainment consumption platforms in the past, until Be In's public release of CamUp in March
20 2011, no company had developed a platform that combined all of these elements to create a live,
21 familiar environment for shared entertainment consumption and social interaction. And its unique
22 combination of those elements made CamUp an unprecedented mode of consuming shared
23 entertainment and other media, such as educational content and documents, online, to which the
24 business and technology community reacted enthusiastically.

25 26. Through individual, expressive elements and its overall creative design, CamUp
26 fosters a sense of trust, familiarity, and community, all without compromising the central
27 entertainment experience. Among the many creative elements that CamUp designed to achieve this
28 unique experience are those set forth below.

27. Each CamUp user has his or her own “room,” which features a large, central frame for viewing shared media (the “Social Player”), and smaller video frames, across the bottom of the page, for everyone gathered in that room. Frames above and to the sides of the Social Player include a text chat window, as well as a shared media playlist, which accommodates music, videos, photos, documents, and other media, and can be added to and modified by anyone inside the room.



The Social Player is designed to be “center stage,” occupying dominant visual space in each online “room”—a design choice that reflects the primacy of the shared entertainment experience to the CamUp platform. These elements of CamUp stand in stark contrast to, for example, video chat services that devote equal space to streaming media or static content and individual video streams.

28. At the same time, a number of elements of CamUp were specifically designed to create a sense of intimacy, familiarity and trust built around a “real name” culture—qualities that distinguish CamUp from many video chat services that are characterized by anonymity and/or antisocial or promiscuous cultures. Examples of these elements include:

- (a) The use of “room” as the central social framework for the service, and the ability to name individual rooms— which are prominently displayed at the top of each session—to reflect the personal style and culture of the participants;
- (b) The ability for users to invite friends to hang out in their room, mimicking the social experience of inviting a friend over to watch a movie or listen to music;
- (c) A prominent “Invite Friend” button that links to existing social networks or contacts and allows users to invite over a group of trusted friends, as opposed to strangers;
- (d) CamUp’s “real name culture,” where users are encouraged to use real names and photos to create authentic identities on the site;
- (e) The ability to “lock” individual rooms, to keep each social entertainment experience private (rooms are private and invitation-only by default, but can be made public);
- (f) The “shaded” friend silhouette icon for the empty seats in a CamUp room, which prompts users to expand the social media experience to include additional friends.

29. In addition to the elements that create a sense of familiarity and trust, other elements of CamUp enhance the communal (rather than individual) nature of the shared entertainment experience, while enabling sufficient individual control to ensure that the group functions cohesively. These features give each user the sense that the shared entertainment—and the conversation among friends—is “around” him or her (i.e. that he or she is central to the entertainment experience and not just a passive consumer of streaming media). For example:

- (a) Icons in the group’s shared playlist show who contributed each piece of media;
- (b) There are options for “shared” control over the playlist and the Social Player—including stop and start capabilities—as well as a “leader mode,” which gives only one user control.
- (c) A group text chat frame on the side of the Social Player creates more opportunities for dialogue and chatter within the group.

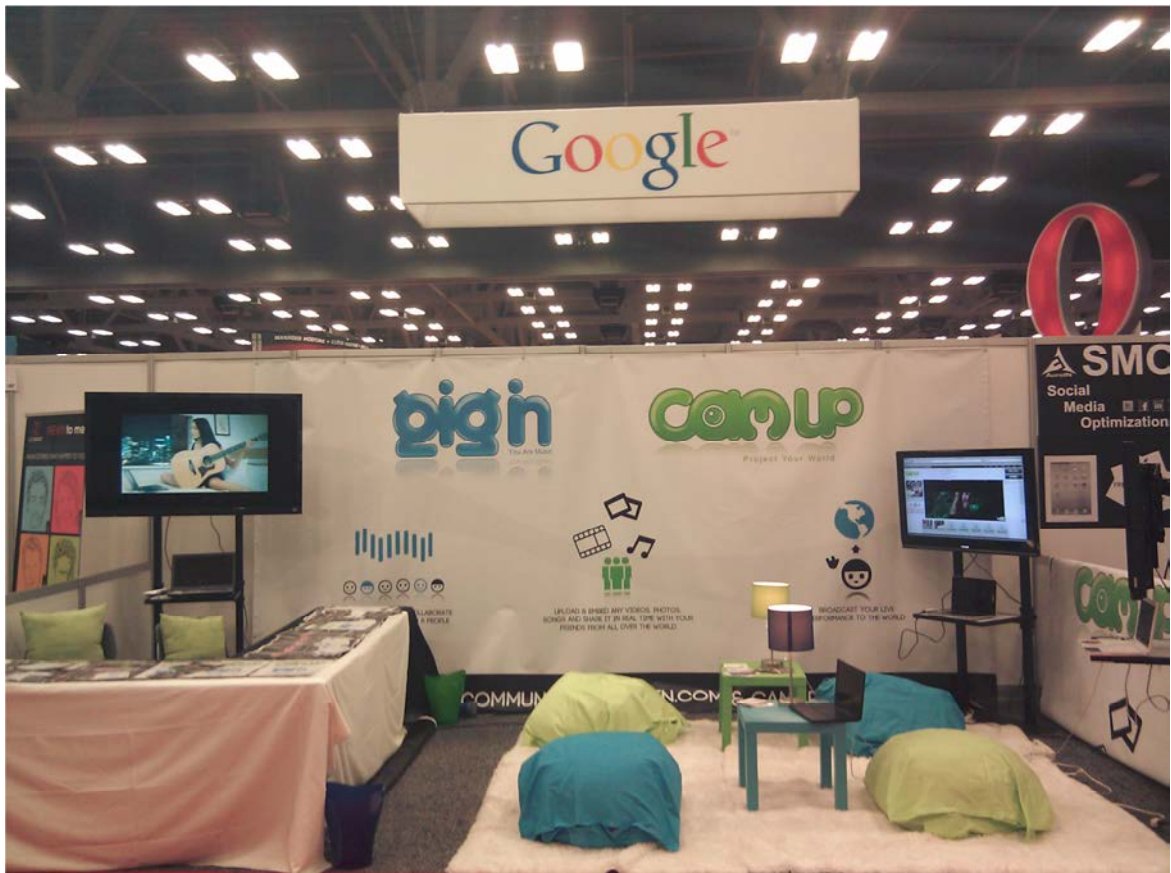
(d) An individual chat option allows for private text conversations in addition to the group chat, and fosters one-on-one interaction amidst private groups, just as would happen when a small group hangs around in the living room.

30. With CamUp, Be In authored an original combination of software and graphical elements, including those described above, that express a customizable, shared entertainment setting, a sense of familiarity and trust, and a unique balance between communal and individual user experiences.

31. Be In has obtained a copyright registration from the United States Copyright Office for registration of its copyright in the CamUp work and platform. Reg. No. TX-7-567-462.

Google's First Exposure to CamUp; Critical Acclaim for CamUp Platform

32. When it debuted at SXSW, CamUp was introduced alongside GigIn, with Be In representatives and beta testers giving live, real-time demonstrations of both platforms only meters away from where Google had set up its booth, as reflected in the photograph below.



1 33. During the conference, Google personnel visited the Be In booth, viewing the
2 demonstrations of both Gig In and CamUp, and discussing the platforms with Be In's representatives.
3 At no point during SXSW did anyone from Google publicly announce or suggest privately to Be In
4 that Google was developing any platform or product similar in any respect to CamUp. And although
5 Google's booth featured demonstrations of several Google products in development, there was no
6 hint of any product relating to social entertainment consumption.

7 34. Shortly after unveiling CamUp at SXSW, in or about early April, 2011, Be In
8 launched www.camup.com, making its social entertainment consumption platform publicly
9 accessible on the Internet.

10 35. Around the same time, Be In was named a finalist—and among “the most innovative”
11 and “pioneering” start-ups in digital entertainment”—by MIPTV Connected Creativity Ventures in its
12 competition for innovation in connected entertainment. MIPTV (Marché Internationale des
13 Programmes de Télévision) is an annual conference and networking forum that is one of the world's
14 leading markets for buying, selling, producing and distributing entertainment content. MIPTV's
15 Connected Creativity Ventures gathers media and entertainment executives, technology professionals
16 and innovative startups from around the world.

17 36. In connection with that competition Be In gave a presentation in Cannes, France, that
18 included a live demonstration of CamUp for a panel of industry experts. At least one senior Google
19 and YouTube executive was present at the competition.

20 37. On or about April 6, 2011, Be In won the “Early Stage” award from MIPTV
21 Connected Creativity Ventures for the most innovative start-up of the year. Be In was chosen from
22 over 150 candidates.

23 **Be In's Meeting With Google And Disclosure Of Its Confidential, Proprietary Business and**
24 **Marketing Strategies**

25 38. Less than a month after CamUp was publicly unveiled at SXSW, and shortly after Be
26 In was named the most innovative start-up of the year by MIPTV Connected Creativity Ventures,
27 Bryan Foss, a consultant for Be In, attempted to set up a meeting between representatives from Be In
28 and representatives from Google and YouTube to discuss CamUp. On or about April 27, 2011 and

again on May 7, 2011, Mr. Foss reached out to Richard Robinson, a Director employed by Google UK in London, suggesting that Be In's social entertainment consumption platform would "work well with Google and YouTube."

39. By this time, Be In had devoted substantial time and resources to developing a comprehensive confidential business strategy for maximizing CamUp's adoption and integration with first party content partners (like Google) and third-party developers through an open API.

40. In particular, with respect to YouTube and Google, Be In devised a strategy to transform Google's (and YouTube's) massive—but unstructured, and largely anonymous—user base, into an organized social community that would foster shared social experiences around Google's content products, including, most immediately, YouTube. At the time, despite millions of views daily, YouTube viewers were nameless and faceless and, while they had the opportunity to post comments to videos, they had no ability to interact with one another through an authenticated social network or in a real-time communal setting. Be In recognized that YouTube and Google were missing an opportunity to create a community, cohesiveness and social interaction around the media content YouTube offered, and Be In devised a highly innovative strategy to integrate CamUp with Google so as to seize that opportunity.

41. One aspect of this integration strategy was the creation of a social plug in between YouTube and CamUp: a button on the bottom right of the YouTube media window inviting users to "Watch with your friends on CamUp." By clicking the button, users would be taken seamlessly into CamUp's trusted social environment, where users could then watch YouTube videos simultaneously with their friends, while chatting about those videos face-to-face in real time. Once YouTube users were fully integrated into the social network, the opportunities for monetization and analytic insights would be endless.

42. As Be In disclosed to Google, this strategy gave Google precisely what it had been attempting—unsuccessfully—to develop for years: a social network that would allow it to compete in the arena of social media and to create a social layer around its myriad products. Google had tried, and failed, multiple times to create its own viable social network. Previous attempts to build a network from existing products—like Gmail—had been notorious flops. Be In's social integration

1 strategy offered Google the promise of creating social engagement and interaction around YouTube's
2 existing media content and Google's (and YouTube's) vast, existing user base. Be In did not disclose
3 its strategy to anyone outside the company prior to meeting with Google.

4 43. On or about May 8, 2011, Mr. Robinson agreed to meet with Joseph D'Anna, CEO
5 and co-founder of Be In, and Nik Miskov, Be In's Vice President of Business Development.
6 Mr. Robinson advised that Bruce Daisey, then a Director at YouTube, would also attend the meeting.
7 Be In understood that these individuals would be attending the meeting as representatives of—and
8 acting on behalf of—Google and its subsidiary, YouTube.

9 44. In advance of the meeting, on or about May 9, 2011, Mr. Miskov emailed
10 Mr. Robinson indicating that while Be In was "more than happy to come and demo [CamUp] as it
11 publically exists and talk about what we have achieved so far," Be In wanted to "dive deeper into our
12 business plan and strategy and to discuss how CamUp can drive tremendous value to giants like
13 YouTube and Google." Mr. Miskov explained that Be In's business plans and strategies were "all
14 trade secrets that could be harmful to communicate without any protection." Accordingly, and, "in
15 order to gauge whether it is appropriate to get into that level of discussion" at their meeting,
16 Mr. Miskov asked Mr. Robinson if he would "agree to signing a Mutual Non-Disclosure Agreement
17 on behalf of Google." Mr. Miskov attached a draft non-disclosure agreement to his e-mail.

18 45. Be In executives previously had resolved that, should Mr. Robinson refuse to sign a
19 non-disclosure agreement on behalf of Google, they would not discuss any confidential business plan
20 or strategy at their meeting, and, instead, only present their then-public platform.

21 46. On or about the next day, May 10, 2011, Celia Brown, Mr. Robinson's assistant, sent
22 an electronic form non-disclosure agreement drafted by Google to Mr. Miskov via e-mail. Be In
23 electronically signed that non-disclosure agreement before the meeting with Google (hereinafter the
24 "NDA").

25 47. Mr. D'Anna and Mr. Miskov met with Mr. Robinson at Google's offices in London on
26 or about May 12, 2012. During the meeting, Mr. D'Anna and Mr. Miskov, as well as several Be In
27 employees who appeared through CamUp, provided Mr. Robinson a live, real-time demonstration of
28 the platform.

1 48. In addition to demonstrating CamUp, Mr. D’Anna and Mr. Miskov detailed Be In’s
2 proprietary social entertainment integration strategy. Be In’s representatives described, in detail, how
3 CamUp could create game-changing social cohesion and interaction among Google’s and YouTube’s
4 large existing user base. Mr. D’Anna disclosed to Mr. Robinson Be In’s plan to use a social plug in
5 on You Tube—a button that would invite YouTube users to “Watch With Your Friends”—so as to
6 drive YouTube users into a Google/CamUp social platform and away from competing platforms
7 where users could, at that time, share YouTube content, albeit in a non-dynamic environment. Be In
8 even disclosed where, precisely, such a button would appear on YouTube’s interface so as to set it
9 apart from competing platforms.

10 49. Be In also discussed with Mr. Robinson a detailed business strategy that would allow
11 Google to leverage the unique features of CamUp’s platform to create a compelling social framework
12 around the full range of Google’s products, such as Google Docs and Google’s Android mobile
13 platform.

14 50. Be In also revealed, in detail, a highly proprietary and ingenious analytics and
15 advertising strategy that offered Google the potential to use CamUp’s platform and social integration
16 strategy to access and aggregate deep social and behavioral insights about YouTube visitors and
17 others using Google products—information that would add incalculable value to Google’s core
18 advertising business. It also revealed a unique strategy for delivering branded or sponsored video
19 advertising to users through the CamUp social entertainment consumption platform, a strategy that
20 could not be effectively implemented by Google under its YouTube model at that time.

21 51. Another key component of the CamUp business plan disclosed to Mr. Robinson
22 involved opening up the CamUp platform to third party developers, who could offer a diverse array
23 of applications, or “apps,” and games, and vastly expand the platform’s functionality and reach—
24 making the social media consumption platform a hub of innovation and attracting users.

25 52. Be In detailed each of these elements of its strategic business plan during its meeting
26 with Mr. Robinson and, one day after their meeting, Mr. Miskov, on behalf of Be In, provided
27 Mr. Robinson, via e-mail, with an 8-page, single-spaced summary overview of some of the key
28 aspects of Be In’s strategic business plan marked as “Confidential.”

1 53. Be In disclosed its proprietary strategic business plan to Mr. Robinson on the mutual
2 understanding and express condition that, if Google utilized any aspect of that plan for its benefit, it
3 would be licensing CamUp from Be In for a one-time, lifetime per-user licensing fee, and that Be In
4 would further participate in advertising and sponsorship revenues generated through the CamUp
5 platform and Be In's strategy.

6 54. Mr. Robinson was enthusiastic about CamUp and the strategic business plan devised
7 by Be In. He asked for additional information, asked to retain materials Be In created during the
8 meeting, and indicated that he would put Be In in touch with someone from YouTube. Mr. Robinson
9 made no mention of any existing projects or projects in the development stage at Google that were
10 similar in any way to CamUp.

11 55. Following the meeting, Mr. Miskov informed Mr. Foss in an email that Be In's
12 meeting with Google went extremely well, and that the "next steps" included a meeting with
13 YouTube in the UK. In that e-mail, Mr. Miskov advised that he felt the "NDA was a good call," and
14 he was happy Be In was "covered" in their conversations with Google.

15 56. Mr. Miskov reached out to Mr. Robinson, via email, on multiple occasions following
16 their meeting. Defendants, however, abruptly cut off all communication with Be In and failed to
17 respond to Plaintiff's repeated emails.

18 57. Upon information and belief, Defendants and/or their employees, agents, and/or other
19 individuals acting on their behalf repeatedly accessed the CamUp website for the purpose of copying
20 the CamUp platform without permission, including the unique creative and expressive elements that
21 were the hallmark of CamUp.

22 58. This conduct was in direct violation of CamUp's "Terms of Service," which
23 Defendants agreed to when they used and/or visited the CamUp website. At all relevant times,
24 CamUp's Terms of Service prohibited users and visitors from, *inter alia*, copying, reproducing,
25 exploiting or distributing the content of the CamUp website without consent, and from using the
26 website in "any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or
27 effect."

28 //

1 59. Upon information and belief, following Plaintiff's meeting with Google in May, 2011,
2 Defendants and/or their employees, agents, and/or other individuals acting on their behalf used and/or
3 visited the CamUp website for the purpose of, or with the result of, copying individual expressive
4 elements and the overall design of CamUp to create a competing social entertainment consumption
5 platform, Hangouts, and for the purpose of, or with the result of, furthering Defendants'
6 misappropriation of Plaintiff's confidential, proprietary information.

7 **Google Launches Hangouts, A Blatant Copy of CamUp**

8 60. Less than two months after Be In's meeting with Google in London, on or about June
9 28, 2011, Google launched an invitation only field test for Google+, its most recent, and ambitious,
10 attempt to create a social network that could bring social functionality and context to its vast user
11 base—and compete with rival Facebook that had surpassed Google as the number one destination on
12 the Internet in 2010. On or about September 20, 2011, Google+ was made accessible to anyone 18
13 years of age or older.

14 61. Within Google+, Google launched Hangouts, a social entertainment consumption
15 platform virtually identical to CamUp, that encouraged users to "hangout" with up to nine friends in a
16 trusted video environment, simultaneously viewing media while, at the same time, chatting and
17 collaborating around a central, shared entertainment experience. The creative and expressive
18 elements of Hangouts at the time of launch were strikingly similar to CamUp:

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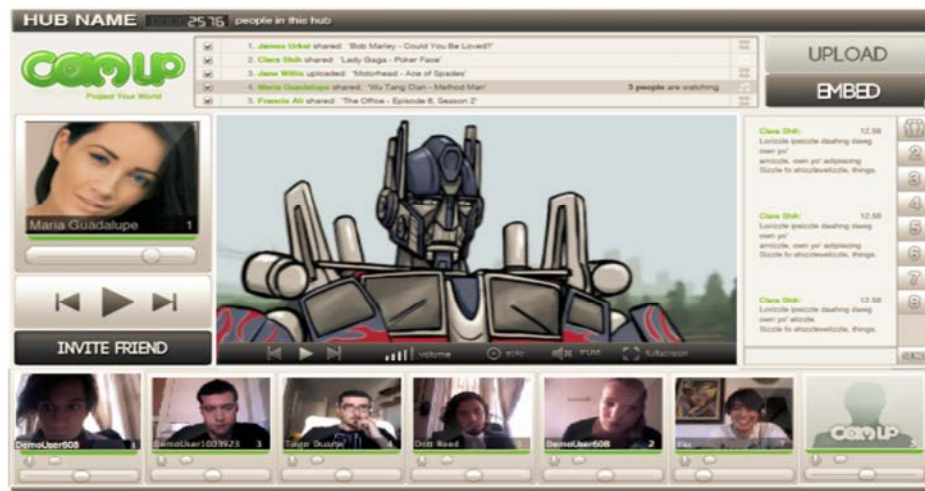
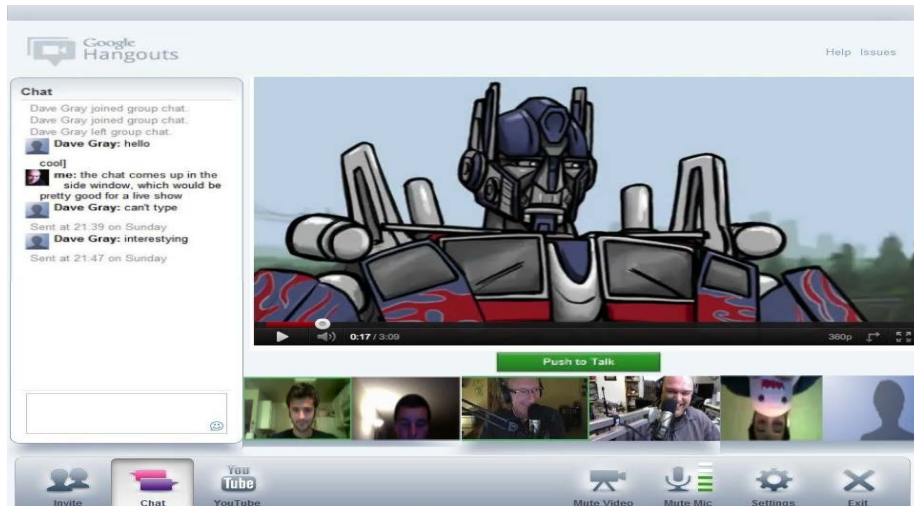
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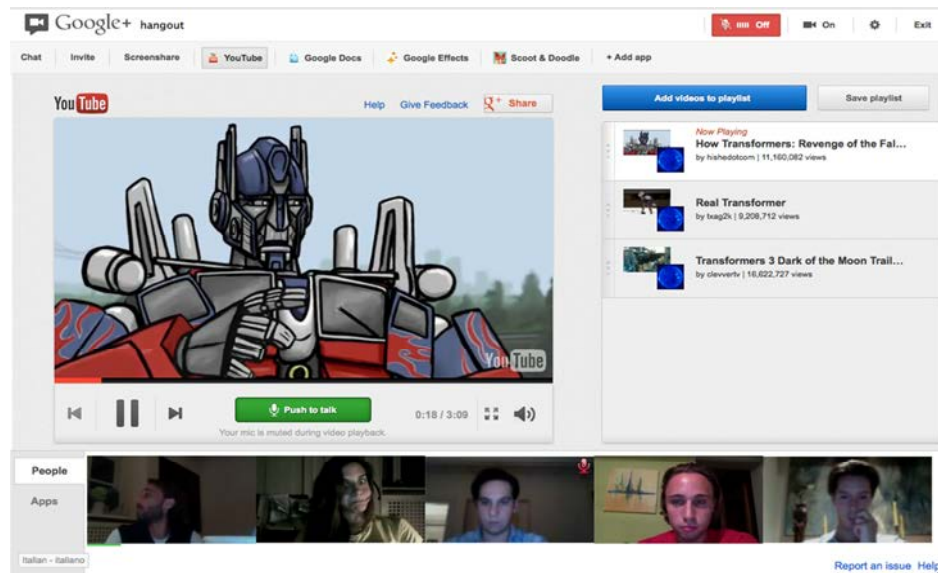


62. The design of Hangouts was virtually indistinguishable from CamUp's. Like CamUp, Hangouts featured a large, central frame, for viewing shared media, and up to ten smaller video frames, organized in a single row across the bottom of the page, for everyone participating in the "hangout"—directly analogous to the "rooms" of CamUp. Frames above and to the sides of the central media frame included a text chat window, and, upon information and belief, as shown below, in later versions of Hangouts, a playlist, which, like the shared playlist in CamUp, could be modified and contributed to by all participants.

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63. Participants could watch videos together, and, in later versions, view images and documents and work on projects together, as in CamUp. The two platforms also shared a very similar invitation process whereby a user could invite his or her friends from within the platform's community. Hangouts, like CamUp's rooms, could be named individually.

64. The frames for each of these features in Hangouts were in similar proportions to those in CamUp. The large, central frame for viewing shared media, for example, occupied dominant visual space, elevating the shared entertainment experience over one on one communication. The chat frame was smaller, more vertically rectangular, and to the side of the central frame, and the webcam frames were much smaller, and immediately adjacent to one another under the central frame. In both platforms, the company logos were positioned in the top left corner. The button icon designs were large and bulky. The "free seat" icon—the icon for an available seat in the session for another participant to join—was identical, a dark grey silhouette against a light gray background. Even the grey and white color scheme of CamUp was duplicated in Hangouts.

65. Remarkably, Google claimed publicly that it took its engineers *less than one day* to create Hangouts—the feature of Google+ that industry critics credit with the success of the new social network. Indeed, despite Hangouts' obvious and substantial creative similarity to CamUp, the technical execution suggested Hangouts was the product of a hurried process. For example, unlike

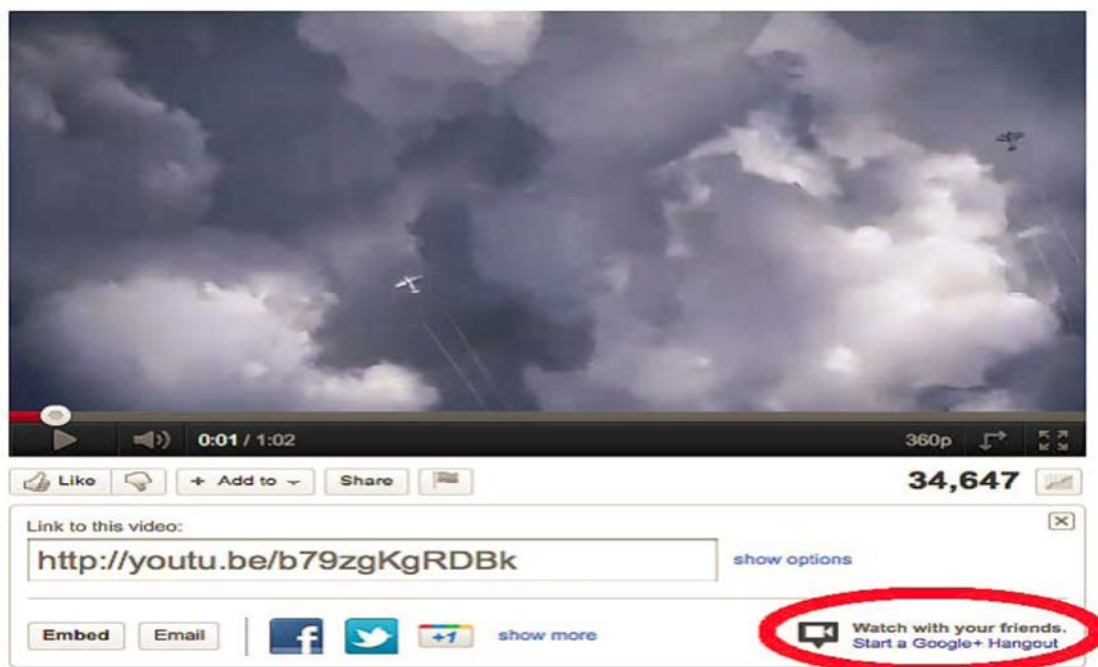
1 CamUp, in order to use Hangouts users were required to download and install a Hangouts plugin on
2 their computer.

3 66. Following its launch, Google touted Hangouts as far more than just a video-chat
4 service. Chee Chew, the Google engineer who oversaw the development of Hangouts stated in an
5 interview, “We use video-conferencing as an important element of it, but the whole serendipitous, run
6 across a hangout, jump in, people flowing in and out. To me that’s the essence of hangouts. The
7 video is just one important element of it but it’s a whole different construct.”

8 67. Media reports hail Hangouts as the “key component of Google+,” “Google’s sharpest
9 edge over Facebook’s current product,” the new social network’s “killer feature.” A leading
10 technology industry media outlet said that “nailing an intimate experience that supports two or more
11 people in a video conference is no small feat, but Google knocked it out of the park with
12 Hangouts It’s more than just one-on-one chat though, which is why Hangouts are so magical.”

13 **Google Integrates Hangouts Into YouTube Using Be In’s Proprietary Strategies**

14 68. One month later, on or about August 18, 2011, Google integrated Hangouts (and, thus,
15 Google+) into YouTube, using the precise mechanism and strategy devised by Be In and disclosed to
16 Google during the May, 2011 meeting. When a YouTube user clicked the “Share” button under any
17 YouTube video, an icon appeared inviting the user to “Watch with your friends. Start a Google+
18 Hangout”—the precise language and concept Be In disclosed confidentially to Google. Clicking the



1 button initiated an instant Hangouts media-sharing session.

2 69. Upon information and belief, Defendants subsequently modified the language of the
3 button, but when a user placed the mouse over the button, the “Watch With Your Friends” language
4 still appeared. Defendants later removed the “Watch With Your Friends” language from YouTube
5 entirely.

6 70. Critically—and as Be In had forecasted to Google—by misappropriating Be In’s
7 social entertainment integration strategy and integrating Hangouts into YouTube, Google for the first
8 time gained traction with a social network, by drawing the YouTube user base into Google+ and a
9 shared viewing experience.

10 71. Industry commentators noted the genius behind Google’s integration of Hangouts into
11 YouTube (the very strategy Be In had disclosed to Google), as a way to attract users to its social
12 platform. The day after the “Watch with your friends” button was added, one industry watcher
13 explained that “To provide a real alternative to Facebook, [Google] will need to get so-called regular
14 users hooked on the service as well. Hooking into YouTube and providing video chat functionality
15 that wasn’t previously available—and isn’t available on competitors like Facebook—is one way to do
16 so.”

17 72. Thereafter, Google continued to rollout the precise strategy Be In had shared with
18 Google in confidence, along with additional unique design elements created by Be In in CamUp. On
19 or about September 20, 2011, Google announced the launch of an On Air feature within Hangouts
20 allowing for public broadcasts that anyone can tune into, with the capability to record the broadcasts.
21 The same day, Google announced “Extras,” a feature that allows users to collaborate on documents in
22 Google Docs, share a sketchpad, share their screens with other users, and name their Hangouts.
23 Google also announced the release of a Hangouts Application Programming Interface (“API”)
24 allowing developers to create applications or “apps” to run on the Hangouts platform. Later versions
25 also allowed for virtual avatars, and designating a room as public or private.

26 73. On or about June 14, 2012, YouTube announced the YouTube application for
27 Hangouts that allows for video playlists that can be modified by any participant.

74. Since the Hangouts launch, Google has pursued collaborations with a number of education-oriented partners and has marketed Hangouts as a tool for students and educators, another strategy disclosed by Be In to Google in confidence. Google has also facilitated the development of commercial “channels” through a combination of YouTube and Hangouts functionality.

75. The features, strategies, and collaborations undertaken by Google since the launch of Hangouts constitute the misappropriation and unauthorized use of Be In's trade secrets disclosed during its May, 2011 meeting with Google.

76. Following Google's introduction of Hangouts, Be In saw a drop in what had been, up to that point, a modest, but steadily increasing, user base. While Be In has continued to conduct meetings with potential investors and/or partners in connection with CamUp, interest in Be In's social entertainment consumption platform has waned since Google's introduction of Hangouts, a blatant (but inferior) copy of CamUp. In addition, entities that previously had expressed significant interest in integrating CamUp into their platforms (to the point of developing product specifications) suddenly terminated their dealings with Be In, citing partnerships with Google and Google's discomfort with Be In's dispute with the company. Notably, in at least one case, a potentially significant partner suggested that they had been informed by Google about this dispute, before this lawsuit was filed.

77. Plaintiff initiated this action on June 28, 2012 to halt Defendants' continued copying, use, and misappropriation of its valuable trade secrets and intellectual property rights, which has caused substantial and irreparable harm to Be In and its intellectual property.

FIRST CAUSE OF ACTION

Misappropriation of Trade Secrets (Cal. Civil Code § 3426, *et seq.*)

Against All Defendants

78. Plaintiff realleges, and incorporates by reference, each and every allegation set forth in paragraphs 1 through 78, inclusive.

79. Plaintiff's confidential proprietary business and marketing strategies, including its strategy for integrating CamUp's social platform into YouTube, other Google products, and third-party apps, to fuel social adoption and engagement on Google, constitute information that has

1 independent economic value because they are unknown to others, and are the subject of reasonable
2 efforts to maintain its secrecy and/or limit its use and, accordingly, are trade secrets within the
3 meaning of the California Uniform Trade Secrets Act, California Civil Code section 3426, *et seq.*
4 (“CUTSA”).

5 80. Defendants have acquired, disclosed, and/or used or intend to use Plaintiff’s trade
6 secrets through improper means.

7 81. Defendants’ misappropriation of Plaintiffs’ trade secrets has damaged Plaintiff and/or
8 unjustly enriched Defendants in an amount not yet ascertained, but which will be determined
9 according to proof, including by depriving Plaintiff of participation in revenues and profits
10 Defendants have earned through such misappropriation and by depriving Plaintiff of revenues,
11 partnerships, customers and profits that it otherwise would have earned. See Cal. Civ. Code. §
12 3426.3.

13 82. Upon information and belief, Defendants’ misappropriation of Plaintiff’s trade secrets
14 was willful and malicious and, accordingly, Plaintiff is entitled to exemplary damages, and to recover
15 its reasonable attorney’s fees and costs. See Cal. Civ. Code §§ 3426.3, 3426.4.

16 83. Defendants’ actions have caused and will continue to cause irreparable injury to
17 Plaintiff unless enjoined by this court. Plaintiff has no adequate remedy at law. Accordingly,
18 Plaintiff is also entitled to injunctive relief pursuant to California Civil Code sections 3426.2.

19 **SECOND CAUSE OF ACTION**

20 **Copyright Infringement (Copyright Act, 17 U.S.C. §§ 101 *et seq.*)**

21 **Against Google, Inc. and YouTube**

22 84. Plaintiff realleges, and incorporates by reference, each and every allegation set forth in
23 paragraphs 1 through 78, inclusive.

24 85. Plaintiff is the owner of all right, title and interest in the original media platform
25 CamUp. Be In has obtained a copyright registration from the United States Copyright Office for
26 registration of its copyright in the CamUp work and platform. Reg. No. TX-7-567-462. A true and
27 correct copy of the certificate of registration is attached hereto as Exhibit A.

86. Google and YouTube had access to Plaintiff's copyrighted work, through mutual participation and communications with Plaintiff at various technology conferences and as a result of Plaintiff's meeting with Google in May, 2011. In addition, upon information and belief, Defendants accessed Plaintiff's work by using and/or visiting www.camup.com.

87. Upon information and belief, Google and YouTube have infringed and continue to infringe Plaintiff's copyrights in its social entertainment consumption media sharing platform, CamUp, including its individual expressive elements and its overall design, and/or have committed and continue to commit acts of contributory and/or induced infringement, by (i) reproducing Plaintiffs' copyrighted work; (ii) publishing the work on the Internet under the name Google Hangouts, (iii) offering the work to millions of users to use through YouTube and Google's social network, Google+, and (iv) creating unauthorized derivative works through the Hangouts product.

88. As a result of the foregoing activities, Google and YouTube are liable to Plaintiff for copyright infringement, contributory infringement, and/or induced infringement.

89. By reason of Google and YouTube's actions, Plaintiff has suffered, and will continue to suffer, substantial damage to its business, as well as losses in an amount not yet ascertained, but which will be determined according to proof. In addition to Plaintiff's actual damages, Plaintiff is entitled to receive the profits made by Google and YouTube from their wrongful acts, pursuant to 17 U.S.C. § 504.

90. Google and YouTube's conduct has caused and will continue to cause irreparable injury to Plaintiff unless enjoined by this court. Plaintiff has no adequate remedy at law. Accordingly, Plaintiff is entitled to injunctive relief pursuant to 17 U.S.C. § 502.

THIRD CAUSE OF ACTION

Breach of Implied in Fact Contract

Against All Defendants

91. Plaintiff realleges, and incorporates by reference, each and every allegation set forth in paragraphs 1 through 78, inclusive.

92. Plaintiff has devoted extensive time, resources and ingenuity in developing CamUp, a unique social entertainment consumption platform, as well as strategies for integrating CamUp with third party content partners.

93. Plaintiff disclosed its valuable, proprietary business and marketing strategies to Defendants, including its social media integration strategy, in confidence, on the condition that they would utilize those confidential strategies only if, and when, they licensed the CamUp platform from Be In, thereby compensating Be In for the value of those proprietary business strategies.

94. Defendants voluntarily accepted the disclosure of Plaintiff's proprietary business strategies, knew, or should have known, the conditions on which those confidential business strategies were disclosed, and knew the reasonable value of those confidential business strategies.

95. In breach of that mutual understanding, Defendants have actually used, and upon information and belief intend to continue to use, confidential and proprietary business and marketing strategies developed by Be In in connection with its social entertainment platform, CamUp, for the benefit of Defendants. Defendants have not licensed CamUp.

96. By reason of Defendants' actions, Plaintiff has sustained and will continue to sustain substantial injury, loss, and damage in an amount not yet ascertained, but which will be determined according to proof.

FOURTH CAUSE OF ACTION

Breach of Contract

Against All Defendants

97. Plaintiff realleges, and incorporates by reference, each and every allegation set forth in paragraphs 1 through 78, inclusive.

98. The home page of www.camup.com includes a link to CamUp’s “Terms of Service.” At all relevant times, the Terms of Service posted on CamUp’s website stated, under the heading “Your Acceptance,” the following: “By using and/or visiting this Website (collectively, including all content and functionality available through the CamUp.com domain name, the “CamUp Website”, or “Website”), you signify your agreement to these Terms of Use, [and] CamUp’s Privacy Policy. . .”

1 and “If you do not agree to any of these Terms of Use, or the CamUp Privacy Policy, you must
2 discontinue use of the CamUp Website immediately.”

3 99. At all relevant times, the Terms of Service restricted and conditioned use of CamUp as
4 follows:

5 The ***content on the CamUp Website***, except all User Submissions (as defined below),
6 ***including without limitation, the text, software, scripts, graphics, photos, sounds, music,***
7 ***videos, interactive features and the like (“Content”)*** and the trademarks, service marks and
8 logos contained therein (“Marks”), are owned by or licensed to CamUp, subject to copyright
9 and other intellectual property rights under the law. ***Content on the Website*** is provided to
10 you AS IS ***for your information and personal use only and may not be downloaded, copied,***
11 ***reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise***
12 ***exploited for any other purposes whatsoever without the prior written consent of the***
13 ***respective owners.*** CamUp reserves all rights not expressly granted in and to the Website and
14 the Content.

15 100. At all relevant times, the Terms of Service also provided, *inter alia*, that by using
16 and/or visiting the CamUp Website, “[y]ou agree”: “not to distribute in any medium any part of the
17 CamUp Website without CamUp’s prior written authorization”; “to not engage in the use, copying, or
18 distribution of any of the Content other than expressly permitted herein, including any use, copying,
19 or distribution of User Submissions of third parties obtained through the Website for any commercial
20 purpose” and that “[y]ou may not use” the Website in “any way that is unlawful or fraudulent, or has
21 any unlawful or fraudulent purpose or effect.”

22 101. Upon information and belief, following Plaintiff’s meeting with Google in May, 2011,
23 Defendants and/or their employees, agents, and/or other individuals acting on their behalf used and/or
24 visited the CamUp website for the purpose of, or with the result of, copying, downloading,
25 reproducing, distributing or exploiting portions of the CamUp Website and Content (as defined in the
26 Terms of Service) for commercial purposes and without authorization from CamUp, to develop and
27 launch Hangouts.

28 102. Defendants’ conduct was for commercial purposes and was not authorized, and it
therefore breached CamUp’s Terms of Service.

103. By reason of Defendants' actions, Plaintiff has sustained and will continue to sustain substantial injury, loss, and damage in an amount not yet ascertained, but which will be determined according to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant judgment against Defendants on the counts detailed above and issue the following relief:

1. Preliminary injunction prohibiting Defendants and any other persons or entities acting in concert with Defendants from disclosing, exploiting or utilizing Plaintiff's confidential, strategic business and marketing plans disclosed to Google in May, 2011, including, but not limited to, Plaintiff's social integration product and marketing strategy;

2. Permanent injunction prohibiting Defendants and any other persons or entities acting in concert with Defendants from disclosing, exploiting or utilizing Plaintiff's confidential, strategic business and marketing plans disclosed to Google in May, 2011, including, but not limited to, Plaintiff's social integration product and marketing strategy;

3. Preliminary injunction prohibiting Defendants and any other persons or entities acting in concert with Defendants from engaging in future acts of infringement, contributory infringement and/or induced infringement of Plaintiff's copyrights in it is CamUp platform, including by prohibiting Google from offering or utilizing its Hangouts platform;

4. Permanent injunction prohibiting Defendants and any other persons or entities acting in concert with Defendants from engaging in future acts of infringement, contributory infringement and/or induced infringement of Plaintiff's copyrights in it is CamUp platform, including by prohibiting Google from offering or utilizing its Hangouts platform;

5. An accounting of any and all profits of Defendants attributable to its wrongful acts;

6. Monetary damages adequate to compensate Plaintiff for Defendants' acts of trade secret misappropriation, copyright infringement, breach of implied contract, breach of contract, breach of confidence and unfair competition, including actual and exemplary damages and lost profits, in an amount greater than \$75,000.00, or in the alternative for copyright infringement, statutory damages under 17 U.S.C. § 504(c);

7. Plaintiff's attorney's fees;

8. Plaintiff's costs of suit herein incurred;

9. Pre-judgment and post-judgment interest; and

10. Such other and further relief, including all available monetary and equitable relief, as the case may require and this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff Be In, Inc. hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: _____, 2013

Respectfully submitted,

MORRISON & FOERSTER LLP

By: /s/
Charles S. Barquist

Attorneys for Plaintiff
BE IN, INC.