

1 Gregory P. Goonan (Cal. Bar #119821)  
 2 **The Affinity Law Group APC**  
 3 600 West Broadway, Suite 400  
 4 San Diego, CA 92101  
 5 Tel: 619-702-4335  
 6 Fax: 619-243-0088  
 7  
 8 Attorneys for Plaintiff  
 9 Marketing Information Masters, Inc.

10 **UNITED STATES DISTRICT COURT**  
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 Marketing Information Masters, Inc., a  
 13 California corporation,

14 Plaintiff,

15 vs.

16 The Board of Trustees of the California State  
 17 University System, a public entity acting  
 18 through its subdivision San Diego State  
 19 University; and Robert A. Rauch, an  
 20 individual,

21 Defendants.

Case No. 06 CV 1682 JAH (JMA)

**FIRST AMENDED COMPLAINT FOR  
 MONETARY DAMAGES AND  
 INJUNCTIVE RELIEF FOR COPYRIGHT  
 INFRINGEMENT, CONVERSION,  
 MISAPPROPRIATION, AND UNFAIR  
 BUSINESS PRACTICES**

**JURY TRIAL DEMANDED**

22 Plaintiff Marketing Information Masters, Inc. (“Plaintiff”) alleges as follows for its first  
 23 amended complaint:

**NATURE OF ACTION**

24 1. This is an action for copyright infringement, conversion, misappropriation and  
 25 unfair business practices under federal and California law.

26 2. Plaintiff is a corporation owned by an individual named Michael Casinelli.

27 Plaintiff is in the business of performing marketing research studies for a variety of clients.

28 Among the marketing research studies performed by Plaintiff are studies to evaluate the economic

1 impact of public events, including without limitation sporting events, on defined geographic  
2 regions.

3 3. Among the prominent sporting events that have been held for a number of years in  
4 the San Diego geographic region is a post-season college football bowl game called the Holiday  
5 Bowl, which is produced by a non-profit organization tasked with the job of organizing,  
6 promoting and administering the bowl game.

7 4. For a number of years, Mr. Casinelli was associated with committees and boards of  
8 the Holiday Bowl. As a result, for several years, Mr. Casinelli arranged to have Plaintiff perform  
9 studies of the economic impact that the Holiday Bowl had on the San Diego community. The  
10 results of the studies conducted by Plaintiff were memorialized in written reports, which are  
11 protected from copying and plagiarism under the copyright laws of the United States.

12 5. Because of Mr. Casinelli's association with the Holiday Bowl, Plaintiff charged the  
13 Holiday Bowl a fee for its work and for the use of its copyrighted written reports that was far  
14 below the market rate that an entity like the Holiday Bowl organization ordinarily would pay for  
15 the preparation and use of economic impact studies like those prepared for the Holiday Bowl by  
16 Plaintiff.

17 6. The last economic impact study prepared by Plaintiff for the Holiday Bowl  
18 organization assessed the impact of the 2003 Holiday Bowl on the San Diego community. The  
19 results of such study were memorialized in a written report (the "2003 Economic Impact Report")  
20 protected under the United States copyright laws. Plaintiff delivered the 2003 Economic Impact  
21 Report to the Holiday Bowl organization in or about February 2004.

22 7. After delivering the 2003 Economic Impact Report to the Holiday Bowl  
23 organization, Plaintiff decided that it could and would no longer charge below-market rates for the  
24 preparation of economic impact studies for the Holiday Bowl. Consequently, Mr. Casinelli  
25 informed the executives of the Holiday Bowl organization that the Holiday Bowl would need to  
26 pay a market rate for Plaintiff's economic impact studies from and after the 2003 study.

27 8. The Holiday Bowl organization was not willing to pay market rates to Plaintiff for  
28 Plaintiff's economic impact studies. Instead, the Holiday Bowl contracted with the Center for

1 Hospitality and Tourism Research at San Diego State University (the “SDSU Center for  
2 Hospitality and Tourism Research”) conduct the economic impact study for the 2004 Holiday  
3 Bowl.

4 9. Defendant Robert A. Rauch was the director of the SDSU Center for Hospitality  
5 and Tourism Research at all relevant times and was the leader of the 2004 economic impact  
6 research study for the Holiday Bowl.

7 10. Unfortunately, however, Mr. Rauch and the SDSU Center for Hospitality and  
8 Tourism Research did not generate their own original work product in connection with the 2004  
9 economic impact research study for the Holiday Bowl. Instead, Mr. Rauch and the SDSU Center  
10 for Hospitality and Tourism Research obtained a copy of Plaintiff’s copyrighted 2003 Economic  
11 Impact Report and blatantly copied and plagiarized Plaintiff’s copyrighted 2003 Economic Impact  
12 Report to prepare a written report for the Holiday Bowl about the purported economic impact of  
13 the 2004 Holiday Bowl on the San Diego community.

14 11. To make matters worse, the data and statistics presented by Mr. Rauch and the  
15 SDSU Center for Hospitality and Tourism Research were false, distorted and over-inflated, and  
16 did not accurately reflect the true economic impact of the 2004 Holiday Bowl on the San Diego  
17 community. Such falsification and distortion of the economic data was caused in large part by the  
18 fact that Mr. Rauch and the SDSU Center for Hospitality and Tourism Research simply copied  
19 Plaintiff’s 2003 Economic Impact Report rather than independently performing a legitimate  
20 economic impact study and then independently writing a report about such study.

21 12. In doing the acts and things described in this complaint, Mr. Rauch and the SDSU  
22 Center for Hospitality and Tourism Research are guilty of infringing Plaintiff’s copyright rights,  
23 and also are guilty of conversion and unfair business practices under California law. Indeed,  
24 Plaintiff is informed and believes and on that basis alleges that San Diego State University  
25 conducted its own internal investigation after learning about the wrongful conduct of Mr. Rauch  
26 and the SDSU Center for Hospitality and Tourism Research, and itself concluded that Mr. Rauch  
27 and the SDSU Center for Hospitality and Tourism Research were guilty of plagiarizing Plaintiff’s  
28 2003 Economic Impact Report.





1 on the Holiday Bowl (a post season college football game) to conduct studies about the economic  
2 impact of the Holiday Bowl on the San Diego economy.

3 26. The Holiday Bowl organization used Plaintiff's studies for a variety of purposes,  
4 including without limitation marketing and publicity. The Holiday Bowl also used the economic  
5 impact studies performed by Plaintiff to obtain large grants of public funds from the City of San  
6 Diego, the County of San Diego, and the San Diego Unified Port District.

7 27. Plaintiff's study methodology, results, findings and conclusions, explanation and  
8 commentary on such results, findings and conclusions, and other insights were documented in  
9 written reports prepared by Plaintiff for the Holiday Bowl. Each report prepared by Plaintiff is a  
10 separate work protected by the copyright laws of the United States, and Plaintiff owns the  
11 copyright rights in each of such reports.

12 28. Consequently, none of the written reports could be copied, reproduced, distributed,  
13 transferred or sold without Plaintiff's permission and consent. Likewise, derivative works could  
14 not be prepared based upon Plaintiff's reports without Plaintiff's permission and consent.

15 29. The work at issue in this case is the economic impact report prepared by Plaintiff in  
16 2004 regarding the economic impact of the 2003 Holiday Bowl on the San Diego community.  
17 Such report is referred to herein as Plaintiff's "2003 Economic Impact Report."

18 30. Prior to 2004, the Holiday Bowl committee paid Plaintiff the sum of \$15,000.00  
19 per year to perform economic impact studies for the Holiday Bowl. The \$15,000.00 sum charged  
20 by Plaintiff was far below the market value for studies like Plaintiff's economic impact studies.

21 31. In negotiations for the contract for the 2004 study, Plaintiff advised the Holiday  
22 Bowl organization that it could no longer perform the economic impact study for the \$15,000.00  
23 sum that it previously charged. Instead, Plaintiff advised the Holiday Bowl organization that it  
24 would have to charge the Holiday Bowl the market rate for its work.

25 32. The Holiday Bowl organization refused to enter into a contract to pay Plaintiff a  
26 market rate for its work. Instead, the Holiday Bowl organization contracted with San Diego State  
27 University to perform an economic impact study for the Holiday Bowl for 2004 and for two  
28 additional years.

1           33.     Mr. Rauch was the director of SDSU's Hospitality and Tourism Research function  
2 and oversaw the preparation of the 2004 study and report by San Diego State University.

3           34.     In or about November 2003, Mr. Rauch contacted Mr. Casinelli (Plaintiff's owner  
4 and principal) and asked Casinelli to serve as a consultant to Mr. Rauch and SDSU in connection  
5 with the preparation of the 2004 economic impact report. Mr. Rauch asked Mr. Casinelli to serve  
6 as a consultant because, according to Mr. Rauch, he did not know how to do the economic impact  
7 study and Mr. Rauch knew Plaintiff and Mr. Casinelli were experienced in performing such  
8 studies. Mr. Casinelli refused Mr. Rauch's offer.

9           35.     After his conversation with Mr. Rauch, Mr. Casinelli contacted the executive  
10 director of the Holiday Bowl and expressly warned him that neither San Diego State University  
11 nor Mr. Rauch should be given access to the questionnaires and/or the work papers from the  
12 previous studies performed by Plaintiff because such materials were Plaintiff's proprietary  
13 information and intellectual property which neither San Diego State University nor Mr. Rauch had  
14 any right to access or use.

15           36.     Notwithstanding the forgoing, and even though Plaintiff's 2003 Economic Impact  
16 Report was protected by copyright, SDSU and Mr. Rauch simply copied and plagiarized  
17 substantial portions of Plaintiff's 2003 Economic Impact Report and other proprietary information  
18 and intellectual property, substituting different data, to prepare the 2004 SDSU economic impact  
19 report instead of creating their own original report.

20           37.     In copying and plagiarizing Plaintiff's 2003 Economic Impact Report, Mr. Rauch  
21 and San Diego State University for the most part did not even bother to re-type the 2003  
22 Economic Impact Report. Instead, they simply scanned the report into a word processing program  
23 and then changed some of the data.

24           38.     In other cases, San Diego State University and Mr. Rauch copied and/or arranged  
25 to have others under their management and control copy, verbatim and/or in substantial portion  
26 relevant materials from the 2003 Economic Impact Report and Plaintiff's other proprietary  
27 information and intellectual property.

28           39.     The data and statistics presented by Mr. Rauch and the SDSU Center for

1 Hospitality and Tourism Research were false, distorted and over-inflated, and did not accurately  
2 reflect the true economic impact of the 2004 Holiday Bowl on the San Diego community. Such  
3 falsification and distortion of the economic data was caused in large part by the fact that Mr.  
4 Rauch and the SDSU Center for Hospitality and Tourism Research simply copied Plaintiff's 2003  
5 Economic Impact Report rather than independently performing a legitimate economic impact  
6 study and then independently writing a report about such study.

7 40. By doing the wrongful acts alleged herein, Defendants infringed Plaintiff's  
8 copyrights, misappropriated, converted and plagiarized Plaintiff's property, and committed unfair  
9 business practices.

10 41. Mr. Rauch has admitted to Mr. Casinelli and the media that Defendant in fact  
11 copied and plagiarized Plaintiff's property.

12 42. Moreover, Plaintiff is informed and believes and on that basis alleges that San  
13 Diego State University conducted an internal investigation about Defendants' wrongful acts and  
14 concluded that plagiarism had in fact occurred.

15 43. Plaintiff is informed and believes and on that basis alleges that the Holiday Bowl  
16 used the 2004 economic impact report to obtain substantial governmental grants from a number of  
17 sources, including without limitation, the City of San Diego, the County of San Diego and the San  
18 Diego Unified Port District.

19 44. Plaintiff is informed and believes and on that basis alleges that both Mr. Rauch and  
20 San Diego State University have actively advertised and promoted their involvement in and  
21 preparation of the 2004 economic impact study for the Holiday Bowl and, as a result of such  
22 promotional activities, have generated contracts for further and additional work and corresponding  
23 revenues and profits.

24 **FIRST CLAIM FOR RELIEF**

25 (Copyright Infringement)

26 45. Plaintiff realleges and incorporates herein by this reference the allegations of  
27 paragraphs 1 through 44 of this Complaint as though set forth in full.

28 46. At all relevant times, Plaintiff has been the proprietor and owner of all right, title,

1 and interest in and to all copyright rights in the 2003 Economic Impact Report.

2 47. The 2003 Economic Impact Report is protected against copying and infringement  
3 under the copyright laws of the United States.

4 48. In doing the acts and things alleged herein, Defendants have knowingly and  
5 willfully copied protected elements of the 2003 Economic Impact Report and/or have prepared  
6 derivative works derived from the protected elements of the 2003 Economic Impact Report.

7 49. Defendants' copying and misuse of Plaintiff's copyrighted materials has been done,  
8 and is being done, without the consent or permission of Plaintiff.

9 50. The actions of Defendants as alleged herein have infringed and continue to infringe  
10 Plaintiff's copyright rights in the 2003 Economic Impact Report.

11 51. Defendant Rauch has personally infringed Plaintiff's copyright rights in the 2003  
12 Economic Impact Report. Defendant Rauch also has contributed to and/or aided and abetted San  
13 Diego State University's infringement of Plaintiff's copyright rights as alleged herein.

14 52. Defendants' infringement of Plaintiff's copyright rights was and is a willful,  
15 knowing and deliberate infringement.

16 53. Plaintiff is informed and believes, and on that basis alleges, that it has lost and will  
17 continue to lose revenues and has sustained and will continue to sustain damages due to the  
18 actions of Defendants. Defendants' wrongful conduct also has deprived and will continue to  
19 deprive Plaintiff of opportunities for expanding its business and goodwill.

20 54. Plaintiff is entitled to recover from Defendants the damages it has sustained and  
21 will sustain, and any gains, profits and advantages obtained by Defendants as a result of  
22 Defendants' acts of infringement as alleged herein, in an amount according to proof at trial.

23 55. Plaintiff is informed and believes, and on that basis alleges, that unless enjoined by  
24 this Court, Defendants intend to continue their course of conduct and to wrongfully use, infringe  
25 upon, and profit from Plaintiff's copyrighted materials and works derived from such copyrighted  
26 materials.

27 56. As a direct and proximate result of the acts of Defendants as alleged herein,  
28 Plaintiff already has suffered irreparable damage. Plaintiff has no remedy at law and will continue

1 suffer irreparable injury unless Defendants are restrained and enjoined from further infringement  
2 of Plaintiff's copyright rights.

3  
4 **SECOND CLAIM FOR RELIEF**

5 (Conversion)

6 57. Plaintiff realleges and incorporates herein by this reference paragraphs 1 through  
7 56 of this Complaint as though set forth in full.

8 58. Plaintiff is the owner of the all tangible materials and intangible ideas (the  
9 "Property") created and generated by Plaintiff in connection with Plaintiff's work in doing the  
10 various economic impact studies and reports for the Holiday Bowl including, without limitation,  
11 the questionnaires and work papers generated by Plaintiff in connection with such work.

12 59. By engaging in the wrongful acts alleged herein, Defendants have interfered with  
13 Plaintiff's right, title and interest in and to the Property.

14 60. The wrongful acts of Defendants as alleged herein constitute conversion of the  
15 Property under California law.

16 61. As a direct, proximate, and legal result of Defendants' conversion as alleged herein,  
17 Plaintiff has suffered, continues to suffer, and in the future will suffer, actual, consequential and  
18 incidental damages in an amount according to proof at trial.

19 62. Defendants, and each of them, did the acts and things alleged deliberately,  
20 maliciously, with intent to injure and oppress Plaintiff, and in conscious disregard of the rights of  
21 Plaintiff. Moreover, the conduct of Defendants, and each of them, constitutes fraudulent,  
22 malicious, oppressive and/or despicable conduct. Plaintiff therefore is entitled to punitive and  
23 exemplary damages against Defendants, and each of them, in an amount sufficient to punish and  
24 deter Defendants, according to proof at trial.

25 **THIRD CLAIM FOR RELIEF**

26 (Misappropriation)

27 63. Plaintiff realleges and incorporates herein by this reference paragraphs 1 through  
28 62 of this Complaint as though set forth in full.

1           64.           That portion of the Property not expressly incorporated into the economic impact  
2 reports prepared by Plaintiff constitutes confidential, proprietary and trade secret information  
3 owned by Plaintiff.

4           65.           Such information derives economic value from not being known to the public  
5 and/or Plaintiff's competitors.

6           66.           Such information is the subject of efforts that are reasonable under the  
7 circumstances to maintain its secrecy.

8           67.           Plaintiff is informed and believes and on that basis alleges that Defendants used  
9 Plaintiff's confidential and proprietary information and trade secrets in connection with  
10 Defendants' activities as alleged herein, and specifically but without limitation Defendants' work  
11 on and preparation of the 2004 economic impact report.

12           68.           The actions of Defendants as alleged herein constitute the misappropriation of  
13 Plaintiff's confidential and proprietary information and trade secrets in violation of the Uniform  
14 Trade Secrets Act, California Civil Code § 3426 *et seq.*

15           69.           As a direct, proximate, and legal result of Defendants' wrongful acts as alleged  
16 herein, Plaintiff has suffered, continues to suffer, and in the future will suffer, actual,  
17 consequential and incidental damages in an amount according to proof at trial.

18           70.           Plaintiff is entitled to recover from Defendants the damages it has sustained and  
19 will sustain, and any gains, profits and advantages obtained by Defendant as a result of  
20 Defendant's acts of misappropriation as alleged herein, in an amount according to proof at trial.

21           71.           Defendants did the acts and things alleged deliberately, maliciously, with intent to  
22 injure and oppress Plaintiff, and in conscious disregard of the rights of Plaintiff. Moreover, the  
23 conduct of Defendants constitutes oppressive and/or despicable conduct. Plaintiff therefore is  
24 entitled to punitive and exemplary damages against Defendants in an amount sufficient to punish  
25 and deter Defendants, according to proof at trial.

26           72.           Plaintiff is informed and believes and on that basis alleges that Defendants will  
27 continue to misuse and misappropriate Plaintiff's proprietary and confidential information and  
28 trade secrets unless Defendants are restrained and enjoined by the Court. If Defendants are not

1 restrained and enjoined by the Court, Plaintiff will suffer great and irreparable harm, for which  
2 money damages will not afford adequate relief because money damages cannot and will not  
3 compensate Plaintiff for such injury to its business and goodwill.

4 73. Plaintiff is entitled to an award of attorneys fees pursuant to Section 3426.4 of the  
5 California Civil Code.

6 **FOURTH CLAIM FOR RELIEF**

7 (Unfair Business Practices)

8 74. Plaintiff realleges and incorporates herein by this reference paragraphs 1 through  
9 73 of this Complaint as though set forth in full.

10 75. This is a cause of action for unfair business practices in violation of California  
11 Business and Professions Code § 17200 *et seq.*

12 76. California Business & Professions Code section 17200 provides that unfair  
13 competition means and includes “any unlawful, unfair or fraudulent business act or practice and  
14 unfair, deceptive, untrue or misleading advertising.”

15 77. By and through their conduct as alleged herein, Defendants have engaged in  
16 activities which constitute unlawful and unfair business practices prohibited by Business &  
17 Professions Code section 17200 *et seq.*

18 78. As a result of their unlawful and unfair business practices in violation of Business  
19 and Professions Code section 17200, Defendants have received and continues to receive unearned  
20 commercial benefits at the expense of Plaintiff and the public.

21 79. The acts and conduct alleged herein are unlawful, unfair, deceptive, and/or  
22 misleading and constitute a violation of Business & Professions Code section 17200 *et seq.*

23 80. The unlawful and unfair business practices of Defendants as alleged herein present  
24 a continuing threat to members of the public.

25 81. As a direct and legal result of their unlawful and unfair business practices as  
26 described herein, Defendants have been and will be unjustly enriched by the receipt of substantial  
27 sums of money which are ill-gotten gains and profits.

28 82. Pursuant to California Business and Professions Code sections 17203 and 17204,

1 Plaintiff seeks an order of this court: (i) compelling Defendants to make restitution to Plaintiff for  
2 all funds unlawfully and unfairly obtained by Defendants as a result of their violations of  
3 California Business and Professions Code section 17200 *et seq.* and/or disgorge all profits  
4 received as a result of the violations; and (ii) declaring that Defendants have violated the  
5 provisions of California Business & Professions Code sections 17200 *et seq.*

6 83. In prosecuting this cause of action for the enforcement of important rights affecting  
7 the public interest, Plaintiffs seek to recover attorneys' fees under section 1021.5 of the Code of  
8 Civil Procedure.

9  
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for relief as follows:

12 1. For an injunction restraining and enjoining Defendants, and their agents, servants,  
13 employees, affiliates, and all others in active concert or participation with them from (1) directly  
14 or indirectly infringing Plaintiff's copyright rights in the 2003 Economic Impact Report; and (ii)  
15 from further acts of unfair competition as alleged herein.

16 2. For an order requiring Defendants to destroy immediately any and all tangible  
17 materials in Defendants' possession, custody or control shown by the evidence to infringe  
18 Plaintiff's copyright rights.

19 3. For an order finding that, by the acts complained of herein, Defendants have  
20 engaged in unfair business practices, in violation of California Business and Professions Code §§  
21 17200 *et seq.*

22 4. That judgment be entered for Plaintiff and against Defendants, and each of them,  
23 for the actual damages suffered by Plaintiff in an amount according to proof at trial as a result of  
24 Defendants' wrongful acts as alleged herein.

25 5. That judgment be entered for Plaintiff and against Defendants, and each of them,  
26 for the amount of profits earned by Defendants, and each of them, in an amount according to proof  
27 at trial as a result of Defendants' wrongful acts as alleged herein.

28 6. For an award of punitive and exemplary damages in an amount to be proven at trial

1 in an amount sufficient to punish and deter Defendants.

2 7. For an award of attorneys' fees to the maximum extent permitted by law.

3 8. For costs of suit incurred herein; and

4 9. For such other and further relief permitted by law that the Court may deem just and  
5 proper.

6

7

8 DATED: November 8, 2006

THE AFFINITY LAW GROUP APC

9

10

By: /s/ Gregory P. Goonan  
Gregory P. Goonan  
Attorneys for Plaintiff  
Marketing Information Masters, Inc.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

**DEMAND FOR JURY TRIAL**

Plaintiff Marketing Information Masters, Inc. hereby demands a trial by jury.

DATED: November 8, 2006

THE AFFINITY LAW GROUP APC

By: /s/ Gregory P. Goonan  
Gregory P. Goonan  
Attorneys for Plaintiff  
Marketing Information Masters, Inc.

**Certificate of Service**

The undersigned hereby certifies that on this 8<sup>th</sup> day of November 2006, a true and accurate copy of the attached document was electronically filed with the Court, to be served by operation of the Court's electronic filing system, upon the following:

Jonathan S. Pink, Esq.  
Lewis Brisbois Bisgaard & Smith LLP  
650 Town Center Drive, Suite 1400  
Costa Mesa, CA 92626  
Attorneys for Defendants

/s/ Gregory P. Goonan