

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JIMMY FISHBEIN PHOTOGRAPHY, INC.,
an Illinois corporation

Case No.

Plaintiff,

v.

BLOOMSPOT, INC.,
a Delaware corporation,

NOTICE OF REMOVAL

Defendants.

NOTICE OF REMOVAL OF ACTION

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

Please take note that Defendant Bloomspot, Inc. ("Bloomspot, Inc."), by and through its undersigned counsel, pursuant to the provisions of 28 U.S.C. §§ 1332, 1441 and 1446, this day removes this action from the Circuit Court of Cook County, Illinois to this Court. In support of removal, Bloomspot, Inc. submits this notice and states as follows:

1. This action is properly removable to this Court under 28 U.S.C. § 1441. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship and the amount in controversy exceeds the jurisdictional amount of \$75,000.

2. This action was originally filed in the Circuit Court of Cook County, Illinois on October 19, 2011, and served on Bloomspot, Inc. on October 28, 2011. This Notice of Removal of Action is therefore filed within the 30-day period prescribed by 28 U.S.C. § 1446(b). In accordance with 28 U.S.C. § 1446(a), Bloomspot, Inc. has attached hereto true and correct copies of all process, pleadings, and orders served upon them in this matter as of the date of this Notice of Removal of Action. *See* Exhibit A.

3. As required by 28 U.S.C. § 1446(d), Bloomspot, Inc. will promptly file with the Circuit Court of Cook County, Illinois, and serve upon Plaintiff's counsel, a true and correct copy of this Notice of Removal of Action.

4. Venue is proper in this district and division pursuant to 28 U.S.C. § 1441(a) because this district and division embrace the Circuit Court of Cook County, Illinois, the forum in which the removed action was pending.

5. Removal is appropriate in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

6. Bloomspot, Inc. is a Delaware corporation, and does not have its principal place of business in Illinois. *See* Plaintiff's Complaint ("Complaint"), attached hereto as Exhibit A, at ¶¶ 9 and 10). Bloomspot, Inc. is not a citizen of the State of Illinois.

7. According to the allegations of the Complaint, Plaintiff is a citizen of the State of Illinois. (*See* Complaint at ¶8). Accordingly, there is complete diversity of

citizenship as between Plaintiff and Defendant.

8. Plaintiff's Complaint contains allegations which establish that the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. For example, in Count 2 of the Complaint alone, Plaintiff alleges "damages in the amount of its lost profits in an amount exceeding \$50,000." Plaintiff previously informed Bloomspot, Inc. that, in addition to other damages, its alleged lost income totals \$162,000. (*See* Exhibit B). In other paragraphs of the Complaint, it is clear that Plaintiff seeks additional damages in excess of the alleged lost profits, including but not limited to punitive damages for fraud and defamation ("WHEREFORE" clauses, Counts I and IV), damages for denied publicity (§ 62), and other damages for tortious interference with prospective business relations and defamation to be determined at trial (§§ 72 and 77). (*See also* Complaint at Counts I, II, III and IV). As such, the allegations of the Complaint make it clear that the jurisdictional amount set forth in 28 U.S.C. § 1332 is met. Further, it is Bloomspot, Inc.'s good faith belief that that amount in controversy alleged by the plaintiff exceeds the jurisdictional amount.

9. Accordingly, this Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because the requirements for diversity of citizenship and the jurisdictional amount in controversy are satisfied.

10. For all of these reasons, Bloomspot, Inc. respectfully removes this action to this Court from the Circuit Court of Cook County, Illinois.

Dated: November 28, 2011

Respectfully submitted,

BLOOMSPOT, INC.

By /s/ William M. Walsh
One of Its Attorneys

William M. Walsh
LAW OFFICE OF WILLIAM M. WALSH
53 W. Jackson Boulevard
Suite 864
Chicago, Illinois 60604
(312) 362-9190

Kenneth M. Murray
HAND BALDACHIN AMBURGEY LLP
8 West 40th Street
12th Floor
New York, NY 10018
(212) 956-9500
Pro hac vice application to be filed

EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Jimmy Fishbein Photography, Inc.

v.

Bloomspot, Inc.

No. 2011LO10875
 CALENDAR/ROOM T
 TIME 00:00
 Breach of Contract
 FILED IN LAW DIVISION
 2011 OCT 19 PM 1:59
 DOROTHY BROWN
 CLERK OF THE CIRCUIT COURT
 OF COOK COUNTY, IL

(FILE STAMP)

CIVIL ACTION COVER SHEET - CASE INITIATION

A Civil Action Cover Sheet - Case Initiation shall be filed with the complaint in all civil actions. The information contained herein is for administrative purposes only and cannot be introduced into evidence. Please check the box in front of the appropriate case type which best characterizes your action. ONLY ONE (1) CASE TYPE MAY BE CHECKED WITH THIS COVER SHEET.

Jury Demand Yes No

PERSONAL INJURY/WRONGFUL DEATH

CASE TYPES:

- 027 Motor Vehicle
- 040 Medical Malpractice
- 047 Asbestos
- 048 Dram Shop
- 049 Product Liability
- 051 Construction Injuries
(including Structural Work Act, Road
Construction Injuries Act and negligence)
- 052 Railroad/FELA
- 053 Pediatric Lead Exposure
- 061 Other Personal Injury/Wrongful Death
- 063 Intentional Tort
- 064 Miscellaneous Statutory Action
(Please Specify Below**)
- 065 Premises Liability
- 078 Fen-phen/Redux Litigation
- 199 Silicone Implant

TAX & MISCELLANEOUS REMEDIES

CASE TYPES:

- 007 Confession of Judgment
- 008 Replevin
- 009 Tax
- 015 Condemnation
- 017 Detinue
- 029 Unemployment Compensation
- 036 Administrative Review Action
- 085 Petition to Register Foreign Judgment
- 099 All Other Extraordinary Remedies

COMMERCIAL LITIGATION

CASE TYPES:

- 002 Breach of Contract
- 070 Professional Malpractice
(other than legal or medical)
- 071 Fraud
(other than legal or medical)
- 072 Consumer Fraud
- 073 Breach of Warranty
- 074 Statutory Action
(Please Specify Below**)
- 075 Other Commercial Litigation
(Please Specify Below**)
- 076 Retaliatory Discharge

OTHER ACTIONS

CASE TYPES:

- 062 Property Damage
- 066 Legal Malpractice
- 077 Libel/Slander
- 079 Petition for Qualified Orders
- 084 Petition to Issue Subpoena
- 084 Petition to Issue Subpoena
- 100 Petition for Discovery

**

By: Sandy Moran 40897
 (Attorney) (Pro Se)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JIMMY FISHBEIN PHOTOGRAPHY, INC.,
an Illinois corporation,

Plaintiff,

v.

BLOOMSPOT, INC.,
a Delaware corporation,

Defendant.

2011LO10875
CALENDAR/ROOM T
Case No. TIME 00:00
Breach of Contract

FILED LAW DIVISION
2011 OCT 19 PM 2:05
CIRCUIT COURT OF COOK COUNTY, ILL.

AFFIDAVIT PURSUANT TO SUPREME COURT RULE 222 (B)

Pursuant to Supreme Court Rule 222 (B), counsel for the above-named plaintiff certifies that plaintiff seeks money damages in excess of Fifty Thousand and 00/100ths Dollars (\$50,000).

Respectfully submitted,

JIMMY FISHBEIN PHOTOGRAPHY, INC.

By: Sandy L. Morris
One of Its Attorneys

Sandy L. Morris
CHICO & NUNES, P.C.
333 West Wacker Drive, Suite 1800
Chicago, Illinois 60606
Tel: (312) 463-1000
Fax: (312) 463-1001
Attorney No. 40897

Form **BCA-5.25**

(Rev. Jan. 2003)

**AFFIDAVIT OF COMPLIANCE FOR SERVICE
ON SECRETARY OF STATE UNDER THE
BUSINESS CORPORATION ACT**

File # 98055509

Jesse White
Secretary of State
Department of Business Services
Springfield, IL 62756
217-524-6748
www.cyfr-driveillinois.com

This space for use by Secretary of State.

FILED

OCT 21 2011

JESSE WHITE
SECRETARY OF STATE

SUBMIT IN DUPLICATE

Date: 10/21/11

Filing Fee: \$10

Approved: LV

Remit payment in check or money
order payable to Secretary of State.

1. Title and Number of Case:

Jimmy Fishbein Photography, Inc.

first named plaintiff

Bloomspot, Inc.

v.

first named defendant

Number 2011L010875

2. Name of corporation being served: Bloomspot, Inc.

3. Title of court in which an action, suit or proceeding has been commenced: Cir. Ct. Cook County, IL

4. Title of instrument being served: Complaint and Summons

5. Basis for service on the Secretary of State: (check and complete appropriate box)

- a. The corporation's registered agent cannot with reasonable diligence be found at the registered office of record in Illinois.
- b. The corporation has failed to appoint and maintain a registered agent in Illinois.
- c. The corporation was dissolved on _____, _____; the conditions of paragraphs (a) or (b) above exist; and the action, suit or proceeding has been instituted against or has affected the corporation within five (5) years thereafter.
- d. The corporation's authority to transact business in Illinois has been withdrawn/revoked (circle one) on _____, _____.
- e. The corporation is a foreign corporation that has transacted business in Illinois without procuring authority, contrary to the provisions of the Business Corporation Act of 1983.

6. Address to which the undersigned will cause a copy of the attached process, notice or demand to be sent by certified or registered mail: Bloomspot, Inc., 345 Ritch Street, San Francisco, CA 94107

7. The undersigned affirms, under penalties of perjury, that the facts stated herein are true, correct and complete.

Sandy Morris
Signature of Affiant

October 20

2011

Month & Day

Year

(312)

884-5074

Telephone Number

Return to (please type or print clearly):

Sandy L. Morris, Chico & Nunes, P.C.

Name

333 West Wacker Drive, Suite 1800

Street

Chicago, Illinois 60606

State

City/Town

ZIP

**TENDERED TO THE
CORP. DEPARTMENT**

OCT 20 2011

ACCEPTANCE AND FILED DATE
ESTABLISHED ONLY AFTER
REVIEW

2120 - Served
 2220 - Not Served
 2320 - Served By Mail
 2420 - Served By Publication
 SUMMONS

2121 - Served
 2221 - Not Served
 2321 - Served By Mail
 2421 - Served By Publication
 ALIAS - SUMMONS

(2/28/11) CCG N001

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 COUNTY DEPARTMENT, LAW DIVISION

No. _____

2011LO10875
 CALENDAR ROOM 3
 TIME 10400
 BRANCH OF CONTRACT

2011LO10875
 CALENDAR ROOM 3
 TIME 10400

Jimmy Fishbein Photography, Inc.
 _____ (Name all parties)

v.

Bloomspot, Inc.

SUMMONS ALIAS SUMMONS

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the Office of the Clerk of this Court at the following location:

- Richard J. Daley Center, 50 W. Washington, Room 801, Chicago, Illinois 60602
- District 2 - Skokie
5600 Old Orchard Rd.
Skokie, IL 60077
- District 3 - Rolling Meadows
2121 Euclid
Rolling Meadows, IL 60008
- District 4 - Maywood
1500 Maybrook Ave.
Maywood, IL 60153
- District 5 - Bridgeview
10220 S. 76th Ave.
Bridgeview, IL 60455
- District 6 - Markham
16501 S. Kedzie Pkwy.
Markham, IL 60428
- Child Support
28 North Clark St., Room 200
Chicago, Illinois 60602

You must file within 30 days after service of this Summons, not counting the day of service.
 IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than 30 days after its date.

Atty. No.: 40897
 Name: Sandy L. Morris/Chico & Nunes, P.C.
 Atty. for: Plaintiff
 Address: 333 West Wacker Drive, Suite 1800
 City/State/Zip: Chicago, Illinois 60606
 Telephone: 312-884-5074

WITNESS, GOT 19 2011

[Signature]
 Clerk of Court

Date of service: _____
 (To be inserted by officer on copy left with defendant or other person)

Service by Facsimile Transmission will be accepted at: N/A

 (Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JIMMY FISHBEIN PHOTOGRAPHY, INC.,)
an Illinois corporation,)
)
Plaintiff,)
)
v.)
)
BLOOMSPOT, INC.,)
a Delaware corporation,)
)
Defendant.)

Case No. 2011LO10875
CALENDAR/ROOM T
TIME 00:00
Breach of Contract

COMPLAINT

Plaintiff, Jimmy Fishbein Photography, Inc. ("JFP"), by its attorneys, Chico & Nunes, P.C., complains against Defendant Bloomspot, Inc. ("Bloomspot") as follows:

INTRODUCTION

1. JFP brings this action to recover damages it suffered as a result of Bloomspot's unjustified termination of its contract with JFP. In July 2011, JFP entered into an exclusive contract with Bloomspot, Inc. ("Bloomspot") to provide all of Bloomspot's photography requirements in designated cities across the country for the period from July 27, 2011 through January 1, 2012. Bloomspot knew that in reliance on the parties' contract and communications, JFP was expending significant resources to build up a stable of photographers nationwide to meet Bloomspot's requirements. In addition, JFP turned down other work in order to service Bloomspot's requirements.

2. However, Bloomspot never intended to use JFP for the duration of the agreement. Instead, Bloomspot falsely promised JFP that it intended to honor an exclusive relationship for the duration of the contract in order to induce JFP to provide the contact information for its

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COURT REPORTER
JENNIFER M. BROWN

photographers so that Bloomspot could cut out JFP by contracting with the photographers directly.

3. Shortly after JFP began to perform, and after Bloomspot had amassed sufficient contact information for JFP's photographers, Bloomspot unilaterally (and without informing JFP of its intentions) stopped honoring the parties' agreement. In violation of the express terms of the parties' agreement which, among other things, prohibited Bloomspot from contacting photographers or hiring photographers without contacting JFP, Bloomspot contacted JFP's photographers and falsely informed them that Bloomspot no longer had a contract with JFP. Indeed, Bloomspot cut JFP out completely by hiring JFP's photographers directly.

4. JFP's photographers were confused by Bloomspot's actions and reached out to JFP for an explanation. Because Bloomspot had not communicated with JFP, JFP was unable to explain Bloomspot's actions, leading JFP's photographers to question whether they had valid subcontracts with JFP and leading them to sever their business relationships with JFP in favor of agreements with Bloomspot directly.

5. Eventually, Bloomspot informed JFP that it was terminating the parties' agreement but did not provide any explanation for its conduct. By then, the damage was done. Bloomspot had effectively destroyed JFP's relationships with its remote photographers and given JFP's photographers and potential customers the false impression that JFP was disorganized and unprofessional.

6. JFP has been damaged by Bloomspot's breach of contract, fraud, tortious interference with prospective business relations, and defamatory statements and is entitled to compensatory and punitive damages.

7. In addition, Bloomspot has repeatedly breached the parties' agreement with respect to attribution of JFP's photographs. Based on Bloomspot's past failures, JFP reasonably believes that Bloomspot may refuse in the future to honor its attribution and licensing obligations in connection with images that JFP provided to Bloomspot pursuant to the Agreement. JFP is entitled to a declaration that Bloomspot must provide the appropriate attribution each time it uses photographs provided to Bloomspot by JFP under the parties' contract and honor the ownership rights and licensing restrictions set forth in the Agreement.

PARTIES

8. Plaintiff JFP, at all relevant times, has been an Illinois corporation engaged as a photography studio.

9. On information and belief, Defendant Bloomspot is a Delaware corporation doing business in Chicago, Illinois.

10. On information and belief, Defendant Bloomspot is not registered with the Illinois Secretary of State to do business in Illinois.

JURISDICTION AND VENUE

11. Jurisdiction is proper pursuant to 735 ILCS 5/2-209 because: (1) Bloomspot entered into and began performing a contract substantially connected to Illinois when it entered into the agreement with JFP that is the subject of this lawsuit; (2) Bloomspot regularly transacts business within Illinois by selling products and services to Illinois residents; and (3) Bloomspot regularly enters into contracts with Illinois merchants to sell and/or promote their products or services.

12. Venue is proper pursuant to 735 ILCS 5/2-101 because the transaction out of which the cause of action arose occurred in Cook County. Specifically, the contract was

performed in Cook County because JFP arranged for photographers to take photographs for Bloomspot in Chicago.

FACTUAL BACKGROUND

A. Jimmy Fishbein Photography.

13. Jimmy Fishbein opened the doors of Chicago-based JFP 10 years ago, and JFP has emerged as a well-regarded professional photography studio. Mr. Fishbein incorporated JFP in 2007.

14. JFP's editorial work has appeared in more than 30 magazines worldwide, including Forbes, Business Week, and Newsweek. In addition, JFP has done work for advertising firms representing well known corporate clients including McDonalds, Sears, and Home Depot. Familiar faces in JFP's portfolio include President Barack Obama, former President Bill Clinton, former Chicago Mayor Richard M. Daley and former Chicago Bears coach Mike Ditka.

B. Bloomspot.

15. Bloomspot operates a website that offers deals on local products and services in several cities across the country, including Chicago, Los Angeles, San Francisco, New York, Boston, Houston, Atlanta, Denver, Seattle, San Diego, and Washington, D.C.

16. Bloomspot aspires to give the impression that it offers higher-end experiences than those offered by daily deal sites like Groupon and Living Social.

17. An integral part of Bloomspot's effort to position itself as a higher quality site is its focus on professional quality images for its website. To that end, Bloomspot engaged JFP to take on-site photographs of its partner merchants.

C. Bloomspot and JFP Begin a Business Relationship.

18. The business relationship between Bloomspot and JFP began in Chicago in early 2011 and expanded to Los Angeles and San Francisco effective June 1, 2011.

19. In order to service the Bloomspot account, JFP entered into contractual agreements with photographers across the country.

20. Bloomspot was aware that JFP entered into contractual relationships with its photographers and that the agreements provided that the photographers would send their photographs to JFP for post-production before they were sent to Bloomspot.

D. Bloomspot Decides to Induce JFP to Do Its Legwork.

21. Bloomspot wanted to expand into additional cities but did not want to invest the time and money into locating photographers directly.

22. Accordingly, Bloomspot induced JFP to incur the costs of locating the photographers by falsely promising to enter into an exclusive agreement for all of Bloomspot's requirements in the additional markets.

23. Bloomspot knew that based on Bloomspot's representations regarding expanding the relationship, JFP would and did spend its own money to fly representatives to locate suitable local photographers to which JFP could subcontract Bloomspot orders.

24. In fact, Bloomspot intended for JFP to make these expenditures so that Bloomspot would not have to do so.

E. Bloomspot and JFP Enter Into An Exclusive Agreement.

25. On July 27, 2011, Bloomspot and JFP entered into an agreement pursuant to which JFP would be the exclusive provider of JFP's photography requirements in Chicago, Los Angeles, San Francisco, New York, Boston, Houston, Atlanta, Denver, Seattle, San Diego, and

other U.S. markets through January 1, 2012 (the "Agreement"). A true and accurate copy of the Agreement is attached hereto as Exhibit A.

26. Pursuant to the Agreement, Bloomspot agreed to obtain all of its photography requirements from JFP:

Bloomspot.com, herein known as the "Client" seeks to engage Jimmy Fishbein Photography, Inc., herein known as the "Photographer" for ongoing work providing proprietary shots of the Client's partners, herein known as the "Merchant" in Chicago, IL, Los Angeles, CA, San Francisco, CA, New York, NY, Boston, MA, Houston, TX, Atlanta, GA, Denver, CO, Seattle, WA, and San Diego, CA and other United States markets TBD as required by the Client.

(Exhibit A, Agreement at 1.)

27. JFP agreed to provide Bloomspot with its photographers' contact information solely for the purpose of contacting JFP's photographers in the event a shoot needed to be rescheduled:

[JFP] will confirm all shoot bookings with the name of the shooter, shooter's cell phone number, date, and time of shoot. [Bloomspot] may only contact shooters to reschedule shoots.

(Exhibit A, Agreement at 1.)

28. Bloomspot agreed to give JFP notice before hiring any photographers directly:

[Bloomspot] may not hire shooters without contacting [JFP].

(Exhibit A, Agreement at 1.)

29. Bloomspot agreed to provide credit to JFP for any JFP photographs it used on its site or in e-mail promotions:

[Bloomspot] will be granted unlimited usage of images produced by [JFP] on Bloomspot.com and Bloomspot.com email promotions for promotions related to the Merchant. The Client must include a credit line accrediting images to Jimmy Fishbein Photography, Inc. on all images provided by [JFP]. The image credit should read:

"Images courtesy of Jimmy Fishbein Photography, Inc." This image credit must be a hyperlink to www.jimmyfishbein.com.

(Exhibit A, Agreement at 2.)

30. In addition, the Agreement set forth the parties' obligations regarding ownership and licensing of the images:

[Bloomspot] agrees that [JFP] shall own, without limitation, all rights to and interest in the photographs from each shoot.

* * *

[Bloomspot] may not license any images produced by [JFP] to the Merchant for any purpose other than their use on Bloomspot.com.

* * *

[Bloomspot] will be granted unlimited usage of images produced by [JFP] on Bloomspot.com and Bloomspot.com email promotions for promotions related to the Merchant.

* * *

Any use of images produced by [JFP] for advertising, print, or electronic purposes must be licensed under a separate usage agreement for a fee to be assessed by [JFP] based upon [Bloomspot's] requested usage.

(Exhibit A, Agreement at 2.)

F. JFP Begins to Perform.

31. In reliance on Bloomspot's representations and the terms of the Agreement, with Bloomspot's full knowledge and support, JFP began to build up a stable of qualified photographers to service Bloomspot's orders.

32. For a period of approximately two weeks after execution of the Agreement, while JFP assembled the photographers Bloomspot needed, Bloomspot continued to book its own photographers in certain markets. Based on Bloomspot's representations and the terms of the

Agreement, JFP understood that it would be the exclusive provider as soon as it had located a sufficient number of photographers.

33. JFP rolled out its nationwide coverage effective August 15, 2011.

34. Immediately, Bloomspot placed orders with JFP in a number of cities in order to gain access to JFP's photographers' contact information.

G. In Its Attempt to Poach JFP's Photographers, Bloomspot Contacts JFP's Photographers, Falsely States That Bloomspot and JFP Do Not Have a Contract, and Advises The Photographers to Breach Their Contracts with JFP.

35. On or about August 18, 2011, in breach of the Agreement, Bloomspot representatives contacted a number of JFP's photographers directly and made false and defamatory statements regarding the status of Bloomspot's relationship with JFP in an attempt to contract with JFP's photographers directly and induce JFP's photographers to breach their contracts with JFP.

36. For example, on August 18, 2011, Bloomspot representative Kate Sullivan contacted Washington, DC-area JFP photographers including Roberto Romano and Kawshiq Chowdhury. Ms. Sullivan informed them that their shoots through JFP were canceled and that they should photograph the same location at the same time through Bloomspot instead. Based on this representation, Mr. Romano and Mr. Chowdhury e-mailed their photographs directly to Bloomspot in breach of their agreements with JFP.

37. Similarly, on August 18, 2011, Patrick of Bloomspot contacted JFP photographer Rich Davis and falsely informed Mr. Davis that Bloomspot had cut ties with JFP and that any photographs he took could not be used.

38. In addition, on August 18, 2011, a representative of Bloomspot contacted Nolan Yee regarding a shoot he had done for JFP in the Boston area. The Bloomspot representative

made false statements regarding the status of Bloomspot's relationship with JFP and led Mr. Yee to believe that he should not honor his contractual obligation to JFP to send JFP the images.

39. Likewise, on August 18, 2011, Ross Silverstein of Bloomspot contacted JFP's photographers in San Diego, including Sean Evans and Joe Belcovson, and falsely stated that Bloomspot and JFP no longer had a contractual relationship.

40. Similarly, on August 18, 2011, Mr. Silverstein and Katie Broadhead of Bloomspot contacted one or more of JFP's photographers in Los Angeles and falsely stated that Bloomspot and JFP no longer had a contractual relationship.

41. In addition, on August 18, 2011, Angela Warren of Bloomspot contacted one or more of JFP's photographers in New York City and falsely stated that all future bookings would be through Bloomspot and not through JFP, causing considerable confusion among JFP's New York photographers.

42. That confusion was compounded when Bloomspot breached the agreement by booking its own photographers and bypassing JFP. For example, on August 19, 2011, JFP photographer Kevin Henderson arrived at the appointed time to photograph a Bloomspot merchant in New York City. Bloomspot knew that JFP had scheduled Mr. Henderson's shoot. Upon arrival, Mr. Henderson discovered that Bloomspot had directly booked another photographer for the same job despite knowing that JFP had already booked a shooter for that job pursuant to the Agreement.

43. The representations regarding the termination of the relationship between JFP and Bloomspot and JFP's photographers' obligations to JFP were false when made.

H. Bloomspot Admits Its True Intentions.

44. In an August 18, 2011 e-mail, Ross Silverstein of Bloomspot impliedly admitted to JFP that Bloomspot never intended to work with JFP for the duration of the agreement and simply wanted JFP to gather photographers' names so Bloomspot could enter into arrangements directly with photographers. In relevant part, Mr. Silverstein's e-mail states: "I just spoke with my manager, who said that we're hoping to work with you guys for now in markets where we're not ready-to-go on our own yet."

45. Initially, on or about August 19, 2011, Bloomspot claimed that there was no valid agreement between JFP and Bloomspot.

46. Later, on August 22, 2011, Frazier Miller of Bloomspot acknowledged that the parties had an agreement but stated that Bloomspot intended to terminate the agreement because the deal no longer suited Bloomspot.

COUNT I FRAUD

47. JFP incorporates Paragraphs 1 through 46 above as if fully set forth herein.

48. When Bloomspot agreed to the terms of the Agreement, Bloomspot knew that it had no intention to use JFP exclusively for all of Bloomspot's requirements for the duration of the contract and that it would terminate the parties' business relationship as soon as JFP gathered a sufficient number of photographers.

49. Bloomspot intended that JFP rely on the false representation that Bloomspot would use JFP exclusively for all of Bloomspot's requirements for the duration of the contract so it could induce JFP to provide Bloomspot with the photographers' contact information.

50. JFP was reasonably unaware of the falsity of Bloomspot's representations.

51. JFP was harmed as a result of Bloomspot's fraudulent conduct in an amount to be proven at trial, equal to the amount of JFP's lost profits due to Bloomspot's fraud.

52. Bloomspot's conduct, as described above, was a substantial factor in causing JFP's harm.

53. Bloomspot's conduct, as described above, was malicious and/or fraudulent, thereby justifying an award of exemplary damages, to deter similar conduct by Bloomspot in the future.

WHEREFORE, Jimmy Fishbein Photography, Inc. requests that the Court enter judgment in its favor, ordering that:

A. Bloomspot must pay JFP compensatory damages in the amount of the amount of JFP's lost profits due to Bloomspot's fraud and punitive damages in an amount exceeding Fifty Thousand Dollars (\$50,000); and

B. Such other and further relief as the Court deems just and proper.

**COUNT II
BREACH OF CONTRACT**

54. JFP incorporates Paragraphs 1 through 53 above as if fully set forth herein.

55. The Agreement is valid and enforceable.

56. Pursuant to the Agreement, among other things, Bloomspot promised to exclusively utilize JFP for the duration of the contract for all of its photography requirements.

57. In addition, Bloomspot promised not to contact JFP's photographers except to reschedule.

58. Moreover, Bloomspot promised not to book photographers without notifying JFP.

59. Additionally, Bloomspot promised not to post JFP photographs without proper attribution.

photographers' obligations to complete the shoots JFP had scheduled and send the photographs to JFP.

67. Bloomspot knew that the information it provided to JFP's photographers did not accurately reflect the parties' business relationships.

68. Bloomspot provided the false information for the purpose of inducing JFP's photographers to terminate their business relationships with JFP.

69. Bloomspot's conduct was calculated to cause damage to JFP in its lawful business.

70. Bloomspot transmitted the information with the unlawful purpose to cause damage and loss to JFP without right or justifiable cause. Bloomspot sought to damage JFP in retaliation for JFP's perceived failure to fully utilize Bloomspot's preferred photographers in San Francisco, even though the Agreement did not require JFP to use any particular photographer. In short, Bloomspot acted with malice.

71. Based on the false information provided by Bloomspot, JFP's photographers terminated their business relationships with JFP.

72. JFP has been damaged in an amount to be proven at trial by Bloomspot's acts, but in no account less than the lost profits JFP would have earned during the remaining term of the contract between JFP and Bloomspot.

WHEREFORE, Jimmy Fishbein Photography, Inc. requests that the Court enter judgment in its favor, ordering that:

A. Bloomspot must pay JFP compensatory damages in the amount of its lost profits in an amount exceeding Fifty Thousand Dollars (\$50,000); and

B. Such other and further relief as the Court deems just and proper.

**COUNT IV
DEFAMATION PER SE**

73. JFP incorporates Paragraphs 1 through 72 above as if fully set forth herein.
74. Bloomspot published a false and defamatory communication concerning JFP in its e-mails, texts, and telephone calls to JFP's photographers on or about August 18, 2011.
75. Specifically, Bloomspot falsely stated that Bloomspot and JFP no longer had a business relationship, that certain photo shoots were cancelled, and that the photographers should send their photographs to Bloomspot instead of JFP.
76. Bloomspot's statements prejudiced JFP in his profession.
77. JFP has been damaged in an amount to be proven at trial by Bloomspot's false and defamatory communications, but in no account less than the lost profits JFP would have earned during the remaining term of the contracts.

WHEREFORE, Jimmy Fishbein Photography, Inc. requests that the Court enter judgment in its favor, ordering that:

- A. Bloomspot must pay JFP compensatory damages in the amount of its lost profits and punitive damages in an amount exceeding Fifty Thousand Dollars (\$50,000); and
- B. Such other and further relief as the Court deems just and proper.

**COUNT V
DECLARATORY RELIEF**

78. JFP incorporates Paragraphs 1 through 77 above as if fully set forth herein.
79. Pursuant to the terms of the parties' agreement, Bloomspot may only utilize JFP photographs pursuant to a license and with proper attribution.

80. Based on Bloomspot's breach of the attribution provision of the contract, there is an actual controversy between the parties with respect to the terms of the contract and Bloomspot's obligation to comply with them.

81. Pursuant to 735 ILCS 5/2-701 and the terms of the parties' agreement, JFP is entitled to a declaration that Bloomspot is obligated to honor the contractual requirement of attribution and the terms of the licensing provision.

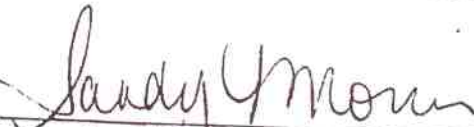
82. There exists a dispute between the parties with respect to Bloomspot's obligations under the parties' agreement with respect to the attribution and licensing requirements.

WHEREFORE, Jimmy Fishbein Photography, Inc. requests that the Court enter judgment in its favor, ordering that:

- A. Bloomspot is obligated to include attribution for any use of JFP's photographs;
- B. Bloomspot may only use JFP's photographs pursuant to the licensing terms in the Agreement; and
- B. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

JIMMY FISHBEIN PHOTOGRAPHY, INC.

By: 
One of Its Attorneys

Sandy L. Morris
CHICO & NUNES, P.C.
333 West Wacker Drive, Suite 1800
Chicago, Illinois 60606
Tel: (312) 463-1000
Fax: (312) 463-1001
Attorney No. 40897

//JIMMYFISHBEINPHOTOGRAPHY

Bloomspot.com, herein known as the "Client" seeks to engage Jimmy Fishbein Photography, Inc., herein known as the "Photographer" for ongoing work providing proprietary shots of the Client's partners, herein known as the "Merchant" in Chicago, IL, Los Angeles, CA, San Francisco, CA, New York, NY, Boston, MA, Houston, TX, Atlanta, GA, Denver, CO, Seattle, WA, and San Diego, CA and other United States markets TBD as required by the Client. This agreement is valid through January 1, 2012.

The Photographer will coordinate with the Client's staff to schedule shoots and deliver shots that reflect a "portrait of the experience" at the Merchant. The Client's website is optimized for horizontal/landscape photographs. Client requests that the photographer deliver primarily horizontal/landscape shots and a minimum of five (5) vertical shots.

The following contract describes the terms and responsibilities of the Client and the Photographer in this relationship.

Booking

Client will request shoots from the photographer via e-mail. All shoot requests will be sent to bloomspot@jimmyfishbein.com at least one business day before the requested shoot. I.e. Shoots for Wednesday should be requested on Tuesday.

All shoot requests must include the following information. Shoot requests will not be considered complete by the Photographer until all of the following information has been received in the following format:

1. Name of Merchant
2. Address
3. Requested shoot date and time
4. Client name, phone number, and email address
5. Requested date and time for image delivery
6. List of products or services to be featured in the Bloomspot promotion / List of requested images.

The Photographer and his staff will schedule the Client's requested shoots and confirm shoot bookings within 3-business hours of the client's request. Please note that the business hours of Jimmy Fishbein Photography, Inc. are 9am- 5pm CST, Monday- Friday. Any requests received after Photographer's business hours will be confirmed on the next business day.

The Photographer will confirm all shoot bookings with the name of the shooter, shooter's cell phone number, date, and time of shoot. The Client may only contact shooters to reschedule shoots. The Client may not hire shooters without contacting the Photographer.

Image Delivery and Turn-Around Time

Photographer will deliver all images from shoots to the Client within 72-hours of scheduled shoots. Images will be delivered through DropBox.com. Images will be a minimum size of 660 x 400 pixels, but ideally 1024 x 768 pixels at a resolution of 72 dpi.



Rush Requests

The Client may request shoots less than one business day in advance of the shoot time. The Client may also request that images be delivered in less than 72 hours. However, rush requests will be charged a one-time fee of \$100/ rush request. This fee is applicable to last minute bookings, rush image delivery, and shoots that require both last minute booking and rush image delivery.

Rescheduling / Cancellation

The Client agrees to pay the Photographer the full base-rate for shoots that are cancelled or rescheduled less than 24 hours before the scheduled shoot time. Rescheduled shoots will be billed at the rates outlined in this agreement.

Grant of Rights/ Usage Agreement

The Client agrees that the Photographer shall own, without limitation, all rights to and interest in the photographs from each shoot.

Notwithstanding the above grant of rights, the Client agrees that the Photographer may use all images from each shoot for promotional purposes including but not limited to displaying the photographs on Photographer's websites and including the photographs in Photographer's portfolio. Photographer may also sell and/or license all images taken during each shoot to the Merchant for any other type of usage for a fee to be determined by the Photographer and the Merchant. These sales may be made by the Photographer to the Merchant at any time that the Photographer determines is appropriate. The client may not license any images produced by the Photographer to the Merchant for any purpose other than their use on Bloomspot.com. Any compensation paid to the photographer for these images by the Merchant will remain the sole property of the Photographer.

The Client will be granted unlimited usage of images produced by the Photographer on Bloomspot.com and Bloomspot.com email promotions for promotions related to the Merchant. The Client must include a credit line accrediting images to Jimmy Fishbein Photography, Inc. on all images provided by the Photographer. The image credit should read: "Images courtesy of Jimmy Fishbein Photography, Inc." This image credit must be a hyperlink to www.jimmyfishbein.com. The client may not sell or license images produced by the Photographer to any third parties including the merchant. The client may not use the images on any site other than Bloomspot.com. Any use of images produced by the Photographer for advertising, print, or electronic purposes must be licensed under a separate usage agreement for a fee to be assessed by the Photographer based upon the Client's requested usage.

Item Description and Pricing

Non-rush shoots in Chicago, IL, Los Angeles, CA, San Francisco, CA, New York, NY, Boston, MA, Houston, TX, Atlanta, GA, Denver, CO, Seattle, WA, and San Diego, CA will be billed at a rate of

//JIMMYFISHBEINPHOTOGRAPHY

\$175/ shoot. This rate is subject to change as the client and the photographer expand into new markets and will be re-assessed if new cities are added.

This fee includes the compensation of the Photographer's studio staff, compensation of associate photographers who may shoot Bloomspot assignments, transportation to and from the shoot location, incidental expenses, insurance, image processing and the above usage terms. Shoot requests made less than 24 hours, or one business day, in advance, rush image delivery, and shoots that require both last minute booking and rush image delivery will be assessed a \$100 fee. Under these terms no shoot after July 26, 2011 will be billed at a rate of less than \$175/ shoot and no more than \$275/shoot.

Payment Terms: Photographer will submit weekly invoices to Client including line item, shoot dates and descriptions, and Photographer's address to accountspayable@bloomspot.com. Payment terms are net 15 from the date that invoices are received.

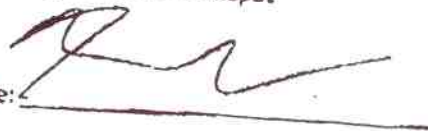
The signatures below confirm that the Client and the Photographer agree to the above terms of this agreement and that these terms are mutually binding.

Authorized agent from Jimmy Fishbein Photography, Inc.

Signature: 
Jimmy Fishbein, Owner

Date: 7/27/2011

Authorized agent from Bloomspot

Signature: 
Chad Powell

Date: 7/27/2011

EXHIBIT B

----- Forwarded message -----

From: **Jimmy Fishbein** <email@jimmyfishbein.com>

Date: Mon, Aug 22, 2011 at 4:24 PM

Subject: Re: Time to chat

To: Frazier Miller <frazier@bloomspot.com>

Cc: ashish@bloomspot.com, Eugene Fayngersh <eugene@bloomspot.com>

Frazier,

Thanks for your e-mail. Although it does clarify some aspects of this situation and acknowledges that we have a contract, it doesn't address the fundamental issue: how Bloomspot intends to resolve the fact that we have a contract, including how you will compensate us for its failure to follow the terms of the contract and the damage Bloomspot caused to our business.

In addition to paying us for the work we've done, it is only fair that we be compensated for the tens of thousands of dollars in losses we are suffering because of Bloomspot's decision not to honor the terms of the contract and because of the way you are handling the situation.

Bloomspot is not honoring several terms of the contract, including: Bloomspot "may not hire shooters without contacting the Photographer;" Bloomspot "may only contact shooters to reschedule shoots;" Bloomspot "must include a credit line accrediting images to Jimmy Fishbein Photography" (we've taken screenshots and developed a list of approximately 55 shoots to date); and Bloomspot will pay net 15 days (although I understand some funds may be on their way.)

We have a contract, and although you may not now like the terms, we spent a lot of time and money making sure we would have a group of quality photographers we could call on to fill your orders. We conducted interviews in person and via video chat, flew to LA and San Francisco to interview photographers, checked references, reviewed work samples, and otherwise did all of the legwork to develop a stable of people to work with. I did a lot of work based on your company's word that it would use our company through January 1, 2012, and it seems like you're now suggesting that I let Bloomspot use of all our legwork without compensating us.

Also, we passed on a lot of other work, including corporate shoots and editorial shoots for national publications, while we were building up the stable of photographers and doing the work to service Bloomspot's orders.

Finally, the way Bloomspot handled its change of heart has caused a lot of confusion among the photographers we work with and hurts our company's professional reputation. Because Bloomspot didn't communicate directly with us, we were at a loss to explain to our photographers what was going on. This lack of communication caused a number of problems, including our photographers showing up only to find another photographer there claiming to be working for Bloomspot. In those situations, we still have to pay our photographers for their time.

At full capacity in 11 markets, we conservatively estimate that Bloomspot would have placed weekly orders of at least \$9,000. Over the 18 weeks remaining in the contract, that totals \$162,000 in lost income. We've identified thousands of dollars in work we had to turn down to service Bloomspot, and thousands of dollars in expenses associated with locating our photographers.

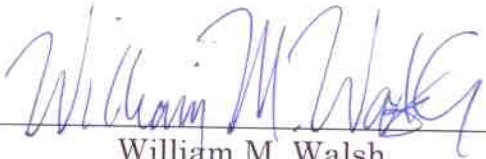
I'm willing to talk to you about a fair and reasonable resolution of this dispute, but this resolution needs to come in the next 48 hours. If we do not resolve this promptly, we will expect you to honor the terms of the contract.

I look forward to hearing from you.

CERTIFICATE OF SERVICE

The undersigned attorney states that, on November 28, 2011, he caused a true and correct copy of the foregoing document to be served upon the following person via messenger delivery:

Sandy L. Morris
Chico & Nunes, P.C.
333 W. Wacker Drive, Suite 1800
Chicago, Illinois 60606



William M. Walsh