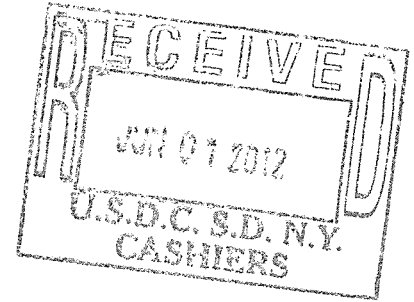


JUDGE MARRERO

12 CV 4320

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARINO INSTITUTE OF
CONTINUING LEGAL EDUCATION, INC.

12 CV _____ (____)

COMPLAINT

Plaintiff,

-against-

OMAR ISSA, LIONYX SOLUTIONS
CORPORATION, MATT PARTAIN, MP
INNOVATIONS, INC. and IPLS GLOBAL

Defendants.

Plaintiff, Marino Institute of Continuing Legal Education, Inc., (“Marino”), by its attorneys, Shukat Arrow Hafer Weber & Herbsman, LLP, for its Complaint herein against defendants Omar Issa (“Issa”), Lionyx Solutions Corporation (“Lionyx”), Matt Partain, MP Innovations, Inc. (“MPI”) and IPLS Global (“IPLS”) (collectively, “Defendants”), alleges as follows:

THE PRELIMINARY STATEMENT

1. Plaintiff brings this action to recover for: (1) violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030; (2) conspiracy; (3) misappropriation of trade secrets; (4) unfair competition; (5) breach of fiduciary duty; (6) aiding and abetting a

breach of fiduciary duty; (7) infringement of copyright pursuant to 17 U.S.C. § 101, *et. seq.*; (8) constructive trust; (9) accounting; (10) trademark infringement pursuant to 15 U.S.C. § 1125(a); and (11) common law unfair competition and misappropriation against Issa and Lionyx.

2. Starting in or around November, 2011, while still in the employment of Marino, Defendant Issa, conspired with the other Defendants to arrange for access to a computerized database containing Marino's historical sales information, client lists, meeting and other continuing legal education materials – all incalculably valuable information which took Marino years to create.

3. Issa, aided and abetted by Defendant Partain, in particular, took this proprietary information in order to target Marino's customer base for solicitation of continuing legal education prospective customer, a business in which both Marino and Lionyx and Issa directly compete.

4. As a result of the Defendants' actions, Marino has been forced to expend thousands of dollars to conduct a full audit of its computer systems, and re-do computer work for which it had paid Partain and the other Defendants. Marino further implemented new measures to prevent further unauthorized computer access. Marino has been harmed by a loss in business as a direct result of Issa's solicitation of Marino customers and teaching staff using information stolen from Marino's computerized database and files.

THE PARTIES

5. Plaintiff Marino Institute of Continuing Legal Education, Inc. is incorporated in New York and has its principal executive office located at 321 East 84th Street, Suite 1, New York, New York 10028. Marino is one of the nation's leading continuing legal education providers, as well as providing tutoring and bar review services.

6. Defendant Issa is an individual who is a resident of the State of New York, residing at 310 East 12th Street, Apt. 1C, New York, New York 10009.

7. Defendant Omar Issa does business as Bridge the Gap Institute for Continuing Legal Education. Issa's principal office is located at 310 East 12th Street, Apt. 1C, New York, New York 10009. Issa is the owner of the Defendant Lionyx and is the controlling force and profits directly from Lionyx's actions and conduct. Lionyx competes directly with Marino.

8. Defendant Lionyx Solutions Corporation is incorporated in New York and has its principal executive office located at 310 East 12th Street, Apt. 1C, New York, New York 10009. Lionyx competes directly with Marino. Issa is the owner of the Defendant Lionyx and is the controlling force and profits directly from Lionyx's actions and conduct.

9. Defendant Matt Partain is an individual who is a resident of the State of New York, residing at 708 3rd Avenue, 5th Floor, New York, New York 10017.

10. Defendant MP Innovations, Inc. is a New York Corporation with its principle place of business at 708 3rd Avenue, 5th Floor, New York, New York 10017.

Defendant Partain does business as IPLS with an office located at 708 3rd Avenue, 6th Floor, New York, New York 10017.

11. Partain is the owner of MPI and IPLS and is the controlling force and profits directly from MPI and IPLS actions and conduct.

JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1338 and 15 U.S.C. § 1121 - this suit is predicated on a violation of the Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. § 1030, the Copyright Act 17 U.S.C. 101, *et. seq.* and the Trademark Act 15 U.S.C. 1125(a).

13. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and because the events giving rise to this Complaint occurred in the Southern District of New York.

FACTUAL ALLEGATIONS

15. Started in 1946, Marino has become one of the most well known and highly respected continuing legal education providers. Marino also provides tutoring services and bar review courses.

16. Over the past sixty (60) years, Marino has built up an extensive database of customer leads, historical sales data, information on rental spaces for its review sessions and other highly proprietary information. These valuable business records are kept in Marino's files and computer database.

17. The computerized database contains information that is not readily available to the public, was compiled through countless calls and hundreds of employee man-hours. Much of the information contained within the database is not known outside Marino and could not possibly be duplicated by others unless such third party expended enormous time and money to independently gather this information. It is this valuable information which was illegally and improperly taken by Issa to unfairly profit and compete with Marino.

18. The database and other information contained on Marino's computer servers is critical to Marino's business and is protected by information technology security measures, all of which were circumvented by Defendants with full knowledge that such conduct was unlawful .

**ISSA'S KNOWLEDGE OF MARINO'S COMPUTERIZED
DATABASE AND FILES CONTAINING TRADE SECRETS**

19. Issa was employed at Marino from approximately 2008 to 2012. Through the course of his employment, Issa was aware of Marino's computerized database and files and knew they contained invaluable data, customer contact information and other highly proprietary information and trade secrets.

20. In or about 2011, Marino, on the recommendations of Issa, hired Partain and his companies to streamline the operation of Marino's existing website. The terms of the contract were as follows: Defendants were to develop a landing page; provide design services for the website; and optimize the functionality of the website. For these services, Partain and his companies were paid approximately \$20,000.

21. In or around early 2012, Issa and Marino discontinued their employment relationship.

22. In or around 2012, Partain and Marino discontinued their business relationship.

**THE DEFENDANTS UNLAWFULLY ACCESS MARINO'S PROPRIETARY
COMPUTERIZED DATABASE AND TRADE SECRETS**

23. Starting in or about September of 2011, all Defendants, entered into an unlawful conspiracy designed to deprive Marino of its proprietary business information and obtain an improper business advantage over Marino, by illicitly accessing the Company's secure computer network and raiding its files.

24. Although Issa was authorized to use and access Marino's computerized database in the course of his employment, he exceeded his authorization by illicitly providing information to Partain for the express and unlawful purpose of developing a competing business.

25. In or about February, 2011, Marino hired Partain, MPI, and IPLS at the behest of Issa. At all times mentioned herein, all Defendants knew that Marino's database and files contained confidential and proprietary information and trade secrets.

**MARINO REMEDIES THE DAMAGE TO THE
COMPUTER SYSTEM AT GREAT EXPENSE**

26. On or about February, 2012, Marino after discovering Issa's deceit took the site away from Partain and MPI. When Partain and MPI were first informed to turn the site over to Marino, Partain and MPI refused to do so on the basis that the site had been intertwined with other sites on Partain's and MP Innovation's server and could not be readily parsed from the other sites. When Marino finally took control of the site, the site was so corrupt that Marino's current IT person struggled, and is still struggling, to rewrite the codes to effectuate proper working of the site. On information and belief, the codes were willfully tampered with by Partain.

27. Marino was forced to install a new firewall protocol.

28. Marino is currently developing an entirely new website because the damage do to the existing website is unfixable.

29. The total cost of these remedial measures is expected to exceed approximately \$50,000.

30. As detailed above, the reasonable cost to Marino of responding to the unauthorized computer access, including the information of remedial measures has already exceeded \$5,000 and is expected to exceed \$50,000.

ISSA'S POSITION OF TRUST WITH MARINO

31. Issa started working at Marino's in his second year of law school in 2008. The summer between his second and third year of school, in 2009 and 2010 he worked full time in Marino's office doing administrative work for Marino as well as legal research for Marino's programs.

32. Issa worked on gaining the trust and confidence of the Plaintiff and became part of the “Marino” family. He was granted unfettered access to the office files and ultimately, after years of building a relationship with the Plaintiff, Issa was even given a key to Joseph and Emily Marino’s home.

33. During this time, Plaintiff educated Issa on everything about the CLE industry and introduced him to many of Marino’s attorney lecturers, and contacts. Issa would ask for legal advice from Joseph Marino in connection with advice on Issa’s law school Career.

34. Unbeknownst to Marino, Issa in violation of his contractual obligations to Marino in breach of his fiduciary duties, began using Marino’s offices and resources while an employee, to create his own competing business.

35. For example, while employed by Marino, Issa took the email lists belonging to Marino. Plaintiff also found that Issa had his competing bridgethegapcle.com logo on December 20, 2011, while in the employment of Marino.

36. While employed by Marino, Issa also formed Lionyx on October 31, 2011. Plaintiff discovered that Issa had applied for his website to receive credit cards as early as October 28, 2011 the same time he was an employee of Marino and working on Marino’s website and using Marino’s resources.

THE COPYRIGHT INFRINGEMENT

37. At all times referred to herein, Defendants were aware of Marino's copyright in the Marino website.

THE TRADEMARK INFRINGEMENT

38. At all times referred to herein, defendants were aware that Marino had a trademark and trade dress in its website.

COUNT I **VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT, 18 U.S.C. § 1030**

39. Plaintiff repeats and realleges every allegation contained in the preceding paragraphs as if set forth herein in full.

40. Marino's computerized database is, and at all relevant times has been, used in interstate commerce and communication and is thus a "protected computer" under the CFAA.

41. While employed at Marino, Defendants Issa intentionally, knowingly, and without authorization, accessed Marino's proprietary computerized database in order to obtain valuable sales history information in violation of 18 U.S.C. § 1030(a)(2)(C).

42. When Issa accessed Marino's computer database, he intended to use the valuable information contained therein to defraud Marino, and to use it for illegal and unlawful purposes.

43. All Defendants intentionally accessed Marino's computer database without authority, or in excess of their authority, to obtain Marino's proprietary and confidential information in violation of 18 U.S.C. § 1030.

44. When Partain, MPI and IPLS accessed Marino's computer database, they intended to provide the information to Issa and Lionyx for their use in direct competition with Marino.

45. Defendant's unauthorized access of Marino's computerized database caused losses and damage to Marino in an amount to be determined at trial, and that exceeds \$5,000, in violation of 18 U.S.C. § 1030.

COUNT II
CONSPIRACY TO VIOLATE THE COMPUTER
FRAUD AND ABUSE ACT, 18 U.S.C. § 1030

46. Plaintiff repeats and realleges every allegation contained in paragraphs 1 through 45 as if set forth herein in full.

47. Marino's computerized database is, and at all relevant times has been, used in interstate commerce and communication and is thus a "protected computer" under the CFAA.

48. Defendants accessed Marino's computerized database, without authority or in excess of their authority.

49. Defendants intentionally, knowingly, and without authorization accessed Marino's proprietary computerized database to obtain Marino's valuable sales history and other proprietary information in violation of 18 U.S.C. § 1030(b).

50. Defendants intentionally accessed Marino's computer database without authority or in excess of their authority to obtain Marino's sales history information in violation of 18 U.S.C. § 1030(b).

51. Pursuant to their illegal agreement, Defendants utilized the confidential and proprietary information stolen from Marino's computerized database, the value of which exceeds \$5,000 to compete directly with Marino in violation of 18 U.S.C. § 1030(b).

52. Defendants' conspiracy, caused losses and damage to Marino in an amount to be determined at trial, and that exceeds \$5,000, in violation of 18 U.S.C. § 1030(b).

COUNT III
MISAPPROPRIATION OF TRADE SECRETS

53. Plaintiff repeats and realleges every allegation contained in paragraphs 1 through 52 as if set forth herein in full.

54. The information contained in Marino's computerized database constitutes a trade secret. The information is not widely known outside of Marino, is restricted internally to appropriate employees, and is protected by Marino. The information is invaluable to Marino and was acquired at great expense and effort by Marino. Substantial portions of the information could not possibly be duplicated by others without great expense and thousands of hours of research.

55. Defendants discovered Marino's confidential and proprietary information through the improper arrangement between Defendants. Defendants

have been using the information contained in the database to compete directly with Marino.

56. Defendant Issa and Partain used Marino's confidential and proprietary information in breach of their fiduciary duty of good faith and loyalty to Marino.

57. As a result of Defendants' misappropriation of the information contained within from Marino's computerized database and other files, Marino has been damaged in amount to be determined at trial.

COUNT IV
UNFAIR COMPETITION

58. Plaintiff repeats and realleges every allegation contained in paragraphs 1 through 57 as if set forth herein in full.

59. Marino's computerized database and files contain proprietary information and trade secrets.

60. Defendants misappropriated this information by taking and exploiting the proprietary information and trade secrets contained in Marino's database.

61. Defendants acted in bad faith by taking and/or using the information contained in Marino's computerized database and files in order to compete with Marino.

62. Defendants exploited Marino's proprietary information and trade secrets by using the information contained in Marino's files in order to solicit Marino's clients.

63. By using the Marino's proprietary information to compete against Marino, defendants misappropriated a valuable commercial advantage belonging to Marino.

64. As a result of Defendants, Marino has been damaged in amount to be determined at trial.

COUNT V
BREACH OF FIDUCIARY DUTY AGAINST ISSA

65. Plaintiff repeats and realleges every allegation contained in paragraphs 1 through 64 as if set forth herein in full.

66. Defendant Issa, a Marino employee, owed Marino a fiduciary duty to exercise good faith and loyalty in the performance of his duties.

67. Issa breached that duty by exceeding his authority to access Marino's technology and utilizing confidential and proprietary information.

68. Issa used this information to actively divert business away from Marino, to whom he owed his fiduciary duty. By doing so, Issa acted in pursuit of his own self-interest and in direct conflict with the interests of Marino.

69. As a result of Defendant Issa's breach of fiduciary duty, Marino has been damaged in amount to be determined at trial.

COUNT VI
**AIDING AND ABETTING A BREACH OF
FIDUCIARY DUTY AGAINST DEFENDANT PARTAIN, MPI, AND IPLS**

70. Plaintiff repeats and realleges every allegation contained in paragraphs 1 through 69 as if set forth herein in full.

71. As a Marino employee, Defendant Issa owed Marino a fiduciary duty to exercise good faith and loyalty in the performance of his duties.

72. Defendant Issa breached that duty by taking technology and by leaking confidential and proprietary information to become a competitor.

73. Defendants Partain, MPI and IPLS assisted Issa in breaching his duty by conspiring with him to access Marino's computerized database with the express purpose of using the information unlawfully gained to directly compete with Marino.

74. As a result of Defendants Partain's, MPI's and IPLS's aiding and abetting, Marino was damaged in amount to be determined at trial.

COUNT VII
COPYRIGHT INFRINGEMENT AGAINST ALL DEFENDANTS

75. Plaintiffs incorporate by reference as if set forth in full herein the allegations of Paragraph 1 through 74 of this Complaint.

76. Plaintiff is, and at all material times hereto has been, the owner of the information contained on www.marinolegalcle.com (the "Copyrighted Material") and is entitled and authorized to protect his website against copyright infringement, including the enforcement of copyright actions. Plaintiff secured the exclusive rights under 17 U.S.C. Section 106, among others, to "reproduce the copyrighted work in

copies or phonorecords," "to prepare derivative works based upon the copyrighted work," and to "perform the copyrighted work publicly." Plaintiff has received a copyright registration for its website dated May 17, 2012 Registration Number TX0007524972.

77. On information and belief, Defendants infringed Plaintiffs copyright including by copying, reproducing, preparing and distributing unauthorized copies and causing the same to be publicly distributed on the internet on the www.bridgethegapcle.com website, by digital download and otherwise, including, but not limited to, in the Southern District of New York.

78. Plaintiff did not authorize Defendants to copy, reproduce, or use the Copyrighted Material. Defendants did not seek or obtain any permission, consent, or license from Plaintiff for the copying, reproduction, performance, or use of the Copyrighted Material.

79. Defendants' infringing acts alleged herein were willful, deliberate, and committed with prior notice and knowledge of Plaintiff's copyright. At a minimum, Defendants acted in reckless disregard of Plaintiff's copyright.

80. As a result of their actions, Defendants are liable to Plaintiff for willful copyright infringement under 17 U.S.C. Section 501. Plaintiff suffered, and will continue to suffer, losses in an amount not yet ascertained, but which will be determined according to proof. In addition to Plaintiffs actual damages, Plaintiff is entitled to receive the profits made by Defendants from their wrongful acts, pursuant to 17 U.S.C. Section 504. In the alternative, Plaintiff is entitled to

statutory damages, pursuant to 17 U.S.C. Section 504(c), which should be enhanced by 17 U.S.C. Section 504(c)(2) because of Defendants' willful copyright infringement.

81. Plaintiff also is entitled to recover their attorneys' fees and costs of suit under 17 U.S.C. Section 505.

COUNT VIII
CONSTRUCTIVE TRUST AGAINST ALL DEFENDANTS

82. Plaintiff incorporates by reference as if set forth in full herein the allegations of Paragraph 1 through 81 of this Complaint.

83. By virtue of their wrongful conduct, Defendants illegally received money and profits that rightfully belonged to Plaintiff.

84. Defendants are therefore involuntary trustees, holding the gross receipts from their product sales and revenues to the extent attributable to Copyrighted Material and therefore attributable to the infringement of Plaintiff's copyright therein. Defendants hold such moneys and funds on behalf of and subject to a first and prior lien against all others and in favor of Plaintiff. On information and belief, Defendants hold this illegally received money and profits in the form of bank account, real property, and personal property that can be located and traced.

85. Plaintiff is entitled to the remedy of a constructive trust in view of Defendants' wrongful infringement of Plaintiffs copyright.

COUNT IX
ACCOUNTING AGAINST ALL DEFENDANTS

86. Plaintiff incorporates by reference as if set forth in full herein the allegations of Paragraph 1 through 85 of this Complaint.

87. Under 17 U.S.C. Section 504, Plaintiff may recover any and all profits of Defendants that are attributable to their acts of infringement.

88. A balance is due from Defendants, and each of them, to Plaintiff for misappropriation of profits and gross receipts arising from or attributable to Defendants' copying, reproduction, performance, and use of Plaintiffs Copyrighted Material.

89. The exact amount of money due from Defendants is unknown to Plaintiff and can only be ascertained through an accounting. Plaintiff seeks an order from this Court directing Defendants to provide Plaintiff with an accounting and payment of the amount due as a result of the accounting, plus interest.

COUNT X
**FALSE DESIGNATION OF ORIGIN AND FALSE ADVERTISING
UNDER 15 U.S.C. § 1125(A) AGAINST ISSA AND LIONYX**

90. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 89 with the same force and effect as if fully set forth herein.

91. Continuously since in or about 2009, Marino has used the www.marinolegalcle.com logo and website in to identify its services and to distinguish it from those services of others, by, among other things, prominently displaying a fanciful logo on its website advertising and promotional material associated therewith (The "Mark"). Said services and advertising have been

distributed in the trade area where the Defendants are doing business, and throughout the United States.

92. As a result of the experience, care and service of Marino in providing exceptional services, Marino has become widely known and has acquired a national reputation for excellence. Mark has become associated with Marino and has come to symbolize the reputation for quality and excellence of its continuing legal education service. As such, the Mark has attained secondary and distinctive trademark meaning to its consumers, and has come to indicate to consumers a meaning of exceptional services originating only with Marino.

93. Accordingly, to the extent that Defendants have used “bridgethegapcle.com”, which is confusingly similar to the Mark in connection with their own services, such use is likely to confuse, mislead or deceive customers, potential customers, sponsors, purchasers or members of the general public as to origin, source, sponsorship, or affiliation of their infringing business, services and goods, and is likely to cause to such people to believe, in error, that the Defendants’ infringing services have been authorized, sponsored, approved, endorsed, or licensed by Marino, or that Issa and Lionyx are in some way affiliated with Marino.

94. Plaintiff has received numerous calls indicating actual confusion.

95. Defendants’ acts constitute false or misleading descriptions, false advertising, and false designations of the origin and/or sponsorship of Plaintiff business and services in violation of Section 43(a) of the Lanham Act, as amended, 15 U.S.C. § 1125(a) in that Defendants’ use in interstate commerce of the Mark, on

or in connection with their infringing business and services constitutes a false designation of origin and unfair competition.

96. Defendants' unauthorized use of the Mark or any mark which is confusingly similar to Mark on or in connection with its their infringing business was done with notice and full knowledge that such use was not authorized or licensed by Marino. Defendants have used and continue to willfully use the Mark with the intent to confuse, mislead, or deceive customers, potential customers, sponsors, purchasers, and members of the general public as to the origin, source, sponsorship, or affiliation of their infringing business, and with the intent to trade on Marino's reputation and goodwill, in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

97. As a direct and proximate result of Defendants' conduct, Marino has suffered damages to its valuable Mark, and other damages in an amount to be proved at trial.

98. Marino does not have an adequate remedy at law, and will continue to be damaged by Issa's and Lionyx's conduct of its infringing business, services and goods unless this Court enjoins Defendants from such fraudulent business practices.

COUNT XI
COMMON LAW UNFAIR COMPETITION AND
MISAPPROPRIATION AGAINST ISSA AND LIONYX

99. Marino repeats and realleges the allegations contained in paragraphs 1 through 98 with the same force and effect as if fully set forth herein.

100. As a result of the experience, care, and service of Marino in developing, promoting and operating Marino, the Mark has become widely known and has acquired a national reputation for excellence. Moreover, the Mark has become associated with Marino, and has come to symbolize the reputation for quality and excellence.

101. Defendants, with full knowledge of the fame of the Mark, intended to and did trade on the goodwill associated with the Mark.

102. The acts of Defendants as alleged herein constitute unfair competition and misappropriation of Plaintiffs common law trademark rights under the laws of the State of New York and of every other state in which Defendants do business, which will cause irreparable injury to Plaintiff unless enjoined by this Court.

103. Defendants have acted knowingly and with reckless disregard of Plaintiff's valuable rights, in bad faith and with the intent of deceiving the public.

104. Defendants' infringement has resulted in, is designed to and will likely cause confusion and deceive consumers into believing that their service are actually Plaintiff's service. To the extent Defendants have used the Mark or any mark which is confusingly similar to the Mark in its website, advertising and promotional materials, when the use of that mark is not sponsored or authorized by Plaintiff,

and the quality of those services is not assured by Plaintiff, has caused and is causing damage to the valuable assets, reputation and goodwill of Plaintiff.

105. As a direct and proximate result of Defendants' conduct, Marino has suffered damages to its valuable Mark, and other damages in an amount to be proved at trial.

106. Marino does not have an adequate remedy at law, and will continue to be damaged by Defendants' operation of their infringing business unless this Court enjoins Issa and Lionyx from such fraudulent business practices.

PRAYER FOR RELIEF

WHEREFORE, Marino prays for judgment as follows:

A. That the Court issue an Order (1) requiring Defendants to return any and all property and all materials which contain or embody any confidential, proprietary and/or trade secret information of Marino in their possession, custody, or control; (2) preliminarily and permanently enjoining Defendants, their agents, representatives, servants, employees and attorneys, and all persons in active concert or participation with them, from disclosing to any third party or using for their own gain the substance or content of any confidential, proprietary and/or trade secret information of Marino; (3) preliminarily and permanently enjoining Defendants, their agents, representatives, servants, employees and attorneys, and all persons in active concert or participation with them, from soliciting or engaging in business with any of Marino's customers or employees until the expiration of the Individual Defendants' obligations plus a time commensurate with their prior

failure to abide by their Agreements; and (4) preliminarily and permanently enjoining Defendants, their agents, representatives, servants, employees and attorneys, and all persons in active concert or participation with them, from continuing to violate 18 U.S.C.A. § 1030.

B. 1. That Defendants, their officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through or under them be permanently enjoined and restrained:

- a. from using in any manner the Mark, alone or in combination with any word or words which so resemble the said trademark as to be likely to cause confusion, deception or mistake on or in connection with the advertising, promotion, offering for sale, or sale of any products or services not Marino, or not authorized by Marino to be sold or used in connection with the Mark;
- b. from passing off, inducing, or enabling others to sell or pass off any product or services as and for products and services produced or established by Marino, not Marino's, or not established and produced under the control and supervision of Marino;
- c. from committing any acts that cause purchasers to believe that Defendants' products and services are those sold under the control and supervision of Marino, or sponsored or approved by,

or connected with, or guaranteed by, or produced under the control and supervision of Marino;

- d. from further diluting and infringing the Mark and damaging Marino's goodwill;
- e. from shipping, delivering, distributing, returning or otherwise disposing of, in any manner, products, materials or inventory not manufactured by or for Marino, nor authorized by Marino to be used or sold or offered for sale, and which bear the Mark;
- f. from otherwise competing unfairly with Marino or any of its authorized licensees in any manner; and
- g. from assisting, aiding, or abetting any other person or business entity on engaging in or performing any of the activities referred to in the above paragraphs (a) through (f).

2. That Defendants be required to deliver up to Marino any and all products, materials, goods, circulars, menus, labels, signs, prints, packages, wrappers, pouches, receptacles, advertising and promotional matter, and other materials in the possession of Defendants or under their control bearing the Mark, alone or in combination with any other words, or used in connection with the advertising, promotion, offering for sale or sale of products or services not Marino's, or not made under the authorization and control of Marino;

3. That Defendants be required to supply Marino with a complete list of entities and customers from whom they purchased and to whom they sold

products or services falsely bearing the Mark or products or services not authorized by Marino to be sold in connection with the Mark;

4. That Defendants, within thirty (30) days after judgment is entered herein, be required to file with the Court and serve upon Marino a written report under oath setting forth in detail the manner in which Defendants have complied with paragraphs 1 through 3, *supra*;

5. That Marino be awarded monetary relief in an amount to be fixed by the Court in its discretion as just, including but not limited to Defendants' profits, revenues and gains realized by Defendants by reason of Defendants' unlawful acts of willful trademark infringement, dilution and unfair competition, to be enhanced pursuant to 15 U.S.C. § 1117(a);

6. That Marino be awarded its costs and attorneys fees pursuant to 15 U.S.C. § 1117(a) and the laws of the State of New York;

7. That Marino be awarded exemplary and punitive damages sufficient to punish Defendants for their malicious and intentional infringement and to deter similar misconduct by Defendants in the future;

8. That Marino be awarded such other and further relief as to this Court may seem just and proper;

C. Finding that the Defendants have infringed Marino's copyrighted interests in connection with its website and business;

1. Permanently enjoining and restraining Defendants, their agents, affiliates and representatives from producing, manufacturing, printing, distributing, selling, marketing, promoting, advertising and/or otherwise exploiting the Material, or causing the foregoing activities to take place, and from otherwise infringing Plaintiff's copyright interests in the Material;

2. Entering judgment for Plaintiff and against Defendants, jointly and severally, for Plaintiffs' actual damages plus Defendants' additional profits, or, in the alternative, statutory damages, pursuant to 17 U.S.C. § 504, in an amount yet to be determined, and directing Defendant to provide an accounting of all sales of and profits derived from the exploitation of the Material;

3. Ordering Defendants to account for all profits, gains and advantages derived from their acts of infringement and for its other violations of law;

4. That all gains, profits and advantages derived by Defendants from their acts of infringement be deemed to be held in constructive trust for the benefit of the Plaintiff; and

5. Ordering Defendants to turn over all copies of the Material that are now within Defendants' ownership or control;

C. For compensatory and punitive damages in an amount to be proven at trial;

D. That Defendants be ordered to account for and pay over to Plaintiff all damages which can be proved by Plaintiff resulting from Defendants' wrongful conduct, and all profits realized by Defendants hereby, with interest;

E. Imposing a constructive trust on all assets of each and all Defendants acquired as a result of their conversion and unjust enrichment;

F. For disgorgement of Defendants ill-gotten profits;

G. That Plaintiff have and recover the costs and disbursements of this action and its reasonable attorneys' fees;

H. That Defendants pay to Plaintiff exemplary and/or punitive damages due to the exceptional circumstances of this case, and the willful and malicious nature of Defendants' acts ; and

I. For such other and further relief as the Court deems appropriate, including interest, costs, disbursements and attorney's fees incurred herein, as permitted by law.

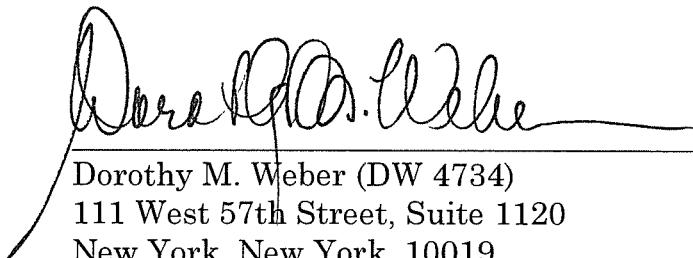
JURY DEMAND

Plaintiff requests a trial by jury in this matter.

Dated: June 1, 2012
New York, New York

Respectfully submitted,

SHUKAT ARROW HAFER WEBER &
HERBSMAN, LLP



A handwritten signature in black ink, appearing to read "Dorothy M. Weber", is written over a horizontal line. The signature is fluid and cursive.

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Attorneys for Plaintiff