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**United States District Court  
District of Nevada**

BEAR OMNIMEDIA LLC,  
Plaintiff,  
VS.  
PANTHEON PRODUCTIONS LLC; DOES  
I-X, ROE COMPANIES I-X  
Defendants.

No. **2:10-cv-00504**

COMPLAINT FOR TRADEMARK  
INFRINGEMENT, TRADEMARK  
DILUTION, UNFAIR COMPETITION,  
FALSE DESCRIPTION, AND INJURY TO  
BUSINESS REPUTATION & DEMAND  
FOR JURY TRIAL

Plaintiff alleges as follows:

JURISDICTION & VENUE

1. This is a complaint for Trademark Infringement, Unfair Competition, and False Description arising under §§ 32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114(1) (Trademark Infringement) and 1125(a) (Unfair Competition and False Description), for relief under the Anti-Dilution Act, 15 U.S.C. § 1125(c), for common law unfair business practice, and for injury to business reputation.

 WOLFE THOMPSON LLC

1 2. This Court has original subject matter jurisdiction over this action pursuant to 28  
2 U.S.C. § 1338(a) and 15 U.S.C. § 1121. This Court has related claim jurisdiction over the  
3 state law claim pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

4 3. This Court has personal jurisdiction over the defendant because a substantial part  
5 of the events or omissions giving rise to the claim occurred in Nevada.

6 4. Venue is proper in this district under 28 U.S.C. §1391(b) and (c) because a  
7 substantial part of the events or omissions giving rise to the claims occurred in this  
8 district, a substantial part of the property that is the subject of the action is situated in  
9 this district, and it is reasonably foreseeable by defendant that a substantial amount of  
10 the harm alleged herein would occur in Nevada.

11 5. The informal Southern District of the District of Nevada is appropriate because of  
12 the principal harm plaintiff occurring in Clark County, Nevada.

13  
14 PARTIES

15 6. Plaintiff is a Nevada limited liability company in good standing. Plaintiff's principal  
16 place of business is in Las Vegas, Nevada.

17 7. Upon information and belief, Defendant PANTHEON PRODUCTIONS LLC  
18 (Pantheon) is, and at all times mentioned herein was, a corporate entity organized and  
19 existing under the laws of the State of California.

20 8. On information and belief, individual defendants are all residents other states  
21 except the State of Nevada. On information and belief, all corporate defendants all have  
22 their principal place of business in the State of California, but they solicit and do  
23 business with residents of the State of Nevada.

1 9. The activities and operations of defendants involve or affect the interstate flow of,  
2 and have a substantial effect on, interstate commerce.

3 10. The true names and capacities, whether individual, corporate, or otherwise, of the  
4 Defendants sued as Does 1 through 10 and Roe Companies are unknown to Plaintiff,  
5 who, therefore, sues them by such fictitious names. At such time as their true names and  
6 capacities have been ascertained, Plaintiff will seek leave of Court to amend this  
7 Complaint accordingly. On information and belief, Plaintiff allege that each of Does 1  
8 through 10 was the agent, representative, or employee of each of the other Defendants  
9 and was acting at all times within the scope of his/her agency or representative capacity,  
10 with the knowledge and consent of the other Defendants, and that each of Does 1  
11 through 10 are liable to Plaintiffs in connection with one or more of the claims sued  
12 upon here and are responsible in some manner for the wrongful acts and conduct  
13 alleged here.  
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15 ALLEGATIONS COMMON TO ALL CLAIMS

16 11. Plaintiff is the publisher of BEAR magazine and movies. BEAR is one of the  
17 longest-established erotic periodical and movie brands specifically geared toward gay  
18 men who are — or who admire — masculine men with body or facial hair, poetically and  
19 fancifully referred to as "Bears."

20 12. To identify to its customers its innovative blend of periodicals, DVD videos, and  
21 other products, on or about March 4, 2004, applied to register trademarks and  
22 servicemarks with the United States Patent and Trademark Office (the "PTO"). On June  
23 30, 2006, the PTO approved plaintiff's application and issued a Certificate of  
24 Registration under Registration Number 3,106,110, in Int. Class 41, and issued a  
25

1 Certificate of Registration under Registration Number 3,106,111, in Int. Class 16. True  
2 and correct copies of such registration certificates are attached as Exhibits 1 &2,  
3 collectively referred to hereafter as the BEAR Marks.

4 13. After the effective date of the registration of plaintiff's BEAR Marks, plaintiff and  
5 Pantheon attended a variety of trade shows and conventions aimed at entertaining and  
6 selling products to Bears. Fully aware that plaintiff owned the rights to the BEAR Marks,  
7 Pantheon published "BEAR Plumbing Inc." on or about February 2010.

8 14. Pantheon's actual use of "BEAR" and plaintiff's distinctive typography and graphic  
9 oval element in its product promotion and advertising constitutes the use in commerce  
10 of a colorable imitation, copy and reproduction of plaintiff's BEAR Marks.

11 15. Upon information and belief, defendant's use of the BEAR Marks will share an  
12 identical sight, sound and meaning. Pantheon's use of "BEAR" for its DVD video is  
13 deceptively and confusingly similar to Plaintiff's long-standing trademarks.

14 16. Pantheon's DVD video will be distributed and sold in the same types of retail  
15 channels and to the same classes of purchasers as plaintiff's family of products and  
16 services. Pantheon's products are aimed at the identical market to that of plaintiff's  
17 goods.

18 17. Pantheon's use of plaintiff's BEAR Marks is likely to cause confusion, mistake, or  
19 deception in the minds of the public.

20 18. Pantheon's infringement of the BEAR Marks constitutes a willful and malicious  
21 violation of plaintiff trademark rights, aimed at preventing plaintiff from continuing to  
22 build a business around a mark that it has long possessed.  
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CLAIMS

**I. FIRST CLAIM: FALSE DESCRIPTION UNDER 15 U.S.C. § 1125(A)**

19. Plaintiff repeats and hereby incorporate herein by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 18.

20. Pantheon's use of the BEAR Marks is such a colorable imitation and copy of plaintiff's trademark established in the market for consumer products that Pantheon's use thereof is likely to create confusion, or to cause mistake, or to deceive consumers as to the affiliation, connection or association of Plaintiff's products, or to deceive consumers as to the origin, sponsorship or approval of plaintiff's products.

21. Pantheon's use of the term BEAR comprises a false description or representation of such business or products under 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act).

**II. SECOND CLAIM: TRADEMARK INFRINGEMENT UNDER LANHAM ACT § 3231**

22. Plaintiff incorporates all the allegations in the preceding paragraphs as if fully set forth herein.

23. Pantheon's use of the BEAR Marks comprises an infringement of plaintiff's registered trademark BEAR and is likely to cause confusion, mistake and deception of the public as to the identity and origin of plaintiff's goods, causing irreparable harm to plaintiff for which there is no adequate remedy at law.

24. By reason of the foregoing acts, Pantheons is liable to plaintiff for trademark infringement under 15 U.S.C. § 1114.

**III. THIRD CLAIM: TRADEMARK DILUTION UNDER THE ANTI-DILUTION ACT 15 U.S.C. § 1125(C)**

25. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

1 26. Plaintiff realleges and incorporates by reference herein the allegations contained in  
2 paragraphs 1 through 34 of the Complaint.

3 27. Plaintiff's BEAR Marks are famous trademarks within the meaning of the Anti-  
4 Dilution Act, 15 U.S.C. § 1125(c).

5 28. Plaintiff has no control over the quality of Pantheon's DVDs, advertising and other  
6 promotional materials, its use of the BEAR Marks, and its misappropriation of the  
7 BEAR Marks. As a result of such use by Pantheon, the distinctive qualities of the BEAR  
8 Marks are being and will continue to be diluted.

9 29. Pantheon's operating of a hotel, its use of and dissemination of materials bearing  
10 the BEAR Marks, and its misappropriation of the BEAR Marks, is and will continue to  
11 result in the dilution of the distinctive nature of the BEAR Marks through blurring, in  
12 violation of 15 U.S.C. §1125(c).

13 30. Pantheon's wrongful conduct constitutes an extreme threat to the distinctiveness of  
14 the BEAR Marks that OCLC has expended great efforts to develop and maintain through  
15 its strict control over the usage of the BEAR Marks.

16 31. The distinctive nature of the BEAR Marks is of enormous value, and plaintiff is  
17 suffering and will continue to suffer irreparable harm and blurring of the BEAR Marks if  
18 Pantheon's wrongful conduct is allowed to continue.

19 32. Pantheon's use of the BEAR Marks, its use of and dissemination of materials  
20 bearing the BEAR Marks, and its misappropriation of the BEAR Marks will likely  
21 continue unless enjoined by this Court.  
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1 33. Plaintiff is entitled to a permanent injunction against Pantheon, as well as all other  
2 remedies available under the Lanham Act, including, but not limited to, compensatory  
3 damages; treble damages; disgorgement of profits; and costs and attorney's fees.

4 **IV. FOURTH CLAIM: UNFAIR COMPETITION UNDER THE LANHAM ACT § 4334**

5 34. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth  
6 herein.

7 35. Pantheon's use of the BEAR Marks to promote, market, or sell DVD products or  
8 services in direct competition with plaintiff's BEAR-branded products and services  
9 constitutes Unfair Competition pursuant to 15 U.S.C. § 1125(a). Pantheon's use of the  
10 BEAR Marks is likely to cause confusion, mistake, and deception among consumers.  
11 Pantheon's unfair competition has caused and will continue to cause damage to plaintiff,  
12 and is causing irreparable harm to plaintiff for which there is no adequate remedy at  
13 law.

14  
15 **V. FIFTH CLAIM: COMMON LAW UNFAIR COMPETITION**

16 36. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth  
17 herein.

18 37. Pantheon's actions discussed herein constitute unfair competition under Nevada  
19 common law.

20 38. Plaintiff is entitled to preliminary and permanent injunctive relief ordering  
21 Pantheons to cease this unfair competition, as well as disgorgement of all of Pantheon's  
22 profits associated with this unfair competition.

23 39. Plaintiff is also entitled to reasonable attorney's fees as special damages.  
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VI. SIXTH CLAIM: COMMON LAW INJURY TO BUSINESS REPUTATION

40. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

41. Pantheon's use of Plaintiff's trademark inures and creates a likelihood of injury to Plaintiff's business reputation because persons encountering Plaintiff and its products and services will believe that Plaintiff is affiliated with or related to or has the approval of Pantheon, and any adverse reaction by the public to Pantheon and the quality of its products and the nature of its business will injure the business reputation of Plaintiff and the goodwill that it enjoys in connection with its BEAR trademarks.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF PRAYS THIS COURT:

42. That defendant Pantheon Productions LLC and its agents, officers, employees, representatives, successors, assigns, attorneys and all other persons acting for, with, by, through or under authority from Pantheon, and each of them, be preliminarily and permanently enjoined from: (a) using Plaintiff's trademark depicted in Exhibits 1 and 2, or any colorable imitation thereof; (b) using any trademark that imitates or is confusingly similar to or in any way similar to Plaintiff's trademark BEAR, or that is likely to cause confusion, mistake, deception, or public misunderstanding as to the origin of Plaintiff's products or their connectedness to Pantheon.

43. That Pantheon be required to file with the Court and serve on Plaintiff within thirty (30) days after entry of the Injunction, a report in writing under oath setting forth in detail the manner and form in which Pantheon has complied with the Injunction;

1 44. That, pursuant to 15 U.S.C. § 1117, Pantheon be held liable for all damages suffered  
2 by plaintiff resulting from the acts alleged herein;

3 45. That, pursuant to 15 U.S.C. § 1117, Pantheon be compelled to account to Plaintiff for  
4 any and all profits derived by it from its illegal acts complained of herein;

5 46. That the Pantheon be ordered pursuant to 15 U.S.C. § 1118 to deliver up for  
6 destruction all containers, labels, signs, prints, packages, wrappers, receptacles,  
7 advertising, promotional material or the like in possession, custody or under the control  
8 of Pantheon bearing a trademark found to infringe plaintiff's BEAR trademark rights, as  
9 well as all plates, matrices, and other means of making the same;

10 47. That the Court declare this to be an exceptional case and award plaintiff its full  
11 costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117;

12 48. That the Court grant Plaintiff any other remedy to which it may be entitled as  
13 provided for in 15 U.S.C. §§ 1116 and 1117 or under state law including reasonable  
14 attorney's fees and costs; and,

15 49. For such and other further relief that the court deems just and proper.  
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17 JURY DEMAND

18 Plaintiff hereby demands a jury on all issues where a jury is allowed.

19 Dated April 8, 2010.

20 /s/ Wolfe Thompson  
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WOLFE THOMPSON, NSB 6463  
23 Attorney for Plaintiff  
24  
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 WOLFE THOMPSON LLC

# The United States of America



## CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

*The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.*

*The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.*

*A copy of the Mark and pertinent data from the application are part of this certificate.*

*To avoid CANCELLATION of the registration, the owner of the registration must submit a declaration of continued use or excusable non-use between the fifth and sixth years after the registration date. (See next page for more information.) Assuming such a declaration is properly filed, the registration will remain in force for ten (10) years, unless terminated by an order of the Commissioner for Trademarks or a federal court. (See next page for information on maintenance requirements for successive ten-year periods.)*



A handwritten signature in black ink that reads "Jon W. I. Dudas".

Director of the United States Patent and Trademark Office

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 3,106,110

Registered June 20, 2006

**SERVICE MARK  
PRINCIPAL REGISTER**



BUTCH MEDIA LTD. (NEVADA LTD LIAB CO)  
PO BOX 98059  
LAS VEGAS, NV 891938059

FOR: ENTERTAINMENT IN THE NATURE OF VISUAL AND AUDIO PERFORMANCES, NAMELY, THEATRICAL PERFORMANCES; ENTERTAINMENT, NAMELY A CONTINUING MUSICAL, VARIETY, NEWS AND DRAMATIC SHOWS BROADCAST; PROVIDING ENTERTAINMENT INFORMATION IN THE FIELD OF ADULT ENTERTAINMENT AT THE SPECIFIC REQUEST OF END-USERS BY MEANS OF TELEPHONE OR GLOBAL COMMUNICATIONS NETWORKS; ENTERTAINMENT SERVICES, NAMELY, PROVIDING ON-LINE ADULT ENTERTAINMENT INFORMATION FOR ADULTS; ORGANIZING COMMUNITY CULTURAL EVENTS; ELECTRONIC PUBLISHING SERVICES, NAMELY, PUBLICATION OF TEXT AND

GRAPHIC WORKS RECORDED ON ELECTRONIC MEDIA, NAMELY, CD, DVD AND ONLINE FEATURING ADULT ENTERTAINMENT; ORGANIZING EXHIBITIONS OF EROTIC ENTERTAINMENT OF INTEREST TO ADULTS; AND PUBLICATION OF ENTERTAINMENT MAGAZINES FOR MEN, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 1-10-2004; IN COMMERCE 2-1-2004.

OWNER OF U.S. REG. NO. 2,598,084.

THE MARK CONSISTS OF AN OVAL SHAPE WITH THE WORD "BEAR" INSIDE THE DESIGN. THE MARK MAY BE ANY COLOR OR SIZE.

SER. NO. 78-518,965, FILED 11-17-2004.

KELLY BOULTON, EXAMINING ATTORNEY

# The United States of America



## CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

*The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.*

*The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.*

*A copy of the Mark and pertinent data from the application are part of this certificate.*

*To avoid CANCELLATION of the registration, the owner of the registration must submit a declaration of continued use or excusable non-use between the fifth and sixth years after the registration date. (See next page for more information.) Assuming such a declaration is properly filed, the registration will remain in force for ten (10) years, unless terminated by an order of the Commissioner for Trademarks or a federal court. (See next page for information on maintenance requirements for successive ten-year periods.)*



A handwritten signature in black ink that reads "Jon W. I. Dudas".

Director of the United States Patent and Trademark Office

Exhibit 2

Int. Cl.: 16

Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50

**United States Patent and Trademark Office**

**Reg. No. 3,106,111**

Registered June 20, 2006

**TRADEMARK  
PRINCIPAL REGISTER**



BUTCH MEDIA LTD. (NEVADA LTD LIAB CO)  
PO BOX 98059  
LAS VEGAS, NV 891938059

FIRST USE 1-10-2004; IN COMMERCE 2-1-2004.

OWNER OF U.S. REG. NO. 2,598,084.

FOR: PUBLICATION OF TANGIBLE PRINTED  
EROTIC ENTERTAINMENT GOODS FOR MEN,  
NAMELY MAGAZINES, BOOKLETS, GREETING  
CARDS, POSTCARDS, PHOTOGRAPHS, CALEN-  
DARS, BROCHURES, BOOKS, NOTEBOOKS, JOUR-  
NALS, CD COVERS, DVD COVERS, IN CLASS 16  
(U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

THE MARK CONSISTS OF AN OVAL SHAPE  
WITH THE WORD "BEAR" INSIDE THE DESIGN.  
THE MARK MAY BE ANY COLOR OR SIZE.

SER. NO. 78-518,967, FILED 11-17-2004.

KELLY BOULTON, EXAMINING ATTORNEY