

Jesse Lanshe (No. 6300294)
jesse@flavaworks.com
933 W. Irving Park Rd., Ste. C
Chicago, IL 60613
Telephone: (305) 438-9450 ext. 307
Facsimile: (305) 438-9470

Attorney for Plaintiff Flava Works, Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

-----X		
Flava Works, Inc.,)	
)	
Plaintiff,)	Case No. _____
)	
)	
v.)	COMPLAINT
)	
TaRon Wyche)	
d/b/a DGSource.com)	
d/b/a Lil Giant Productions,)	
d/b/a LGP LLC,)	JURY TRIAL DEMANDED
John Does 1-5,)	
)	
Defendants.)	
-----X		

Plaintiff, Flava Works, Inc. (hereinafter “Plaintiff” or “Flava Works”), by and through its attorney and for its complaint against Defendants alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action to stop Defendants from infringing, and promoting, encouraging, enabling and facilitating the infringement of, Plaintiff’s copyrights, trademarks and trade dress (collectively “Flava Works’ Intellectual Property”) on the Internet. Defendant Wyche created, owns and operates the website www.DGSource.com (hereinafter “DG Source”). A

portion of this website, dgsources.com/forum, is largely dedicated to the unauthorized posting, reproduction and distribution of copyrighted material, including Flava Works' Intellectual Property. Wyche, through his website, has created a forum through which site members, the Defendant John Does, among others, can post files of copyrighted material directly to the forum and/or post links to third party websites on which the files are available. Wyche has developed a system whereby members can only access certain sections of this forum after they have made a minimum number of posts. Contained in that section is the largest selection of infringing material, in other words "the good stuff." By mandating a certain number of postings before allowing members access to this section, Wyche has purposefully created a system that makes it more difficult for copyright owners to monitor the site for infringement. Wyche runs advertisements on the website. Wyche purposefully facilitates the infringement to increase traffic to the website, thereby driving up ad revenue. Defendant John Does 1-5, whose real identities are currently unknown, but will be added at a later date, are also actively contributing to this infringement by posting files or links on the forum.

THE PARTIES

2. Plaintiff is a corporation incorporated under the laws of the State of Florida with its principal place of business at 2610 N. Miami Ave., Miami, Florida 33127, and an office in Chicago, Illinois at 933 W. Irving Park Rd., Ste. C, Chicago, Illinois 60613.

3. Defendant is an individual named, TaRon Wyche (hereinafter "Wyche"), d/b/a DGSource.com (hereinafter "DG Source"), d/b/a Lil Giant Productions, d/b/a LGP LLC and is residing in the state of Maryland at an unknown address; on information and belief, Wyche has hidden his true and correct address, in violation of ICANN (Internet Corporation for Assigned

Names and Numbers) regulations, by knowingly providing materially false registration information to ThePlanet.com, the public domain name registry that hosts his website.

4. On information and belief, John Does 1-5 (hereinafter collectively “John Does” or individually “John Doe 1,” “John Doe 2,” etc.) are individuals and/or business entities responsible for direct copyright infringement and whose whereabouts are currently unknown.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, § 1338 and § 1367 as the present case arises under copyright infringement pursuant to the Copyright Act, 17 U.S.C. § 101 *et seq.*, trademark infringement pursuant to the Lanham Act, 15 U.S.C. § 1051 *et seq.*, as amended, false designation of origin, trade dress infringement, and unfair competition, as well as trademark infringement and unfair competition arising under the common law of the State of Illinois as is hereinafter more fully described.

6. This Court has jurisdiction over Defendants because Defendants are subject to personal jurisdiction in the State of Illinois under the Illinois Long Arm Statute.

7. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred within this district.

FACTUAL BACKGROUND

8. Plaintiff is a corporation that produces adult entertainment in the form of DVDs, magazines, websites, pictures, streaming video and various other media.

9. Plaintiff distributes its adult entertainment through various distributors and licensees, as well as through its websites: www.CocoStore.com, www.PapiCock.com, and www.ThugBoy.com, among others.

10. Plaintiff has applied for and has registered various copyrights for its works. See attached Exhibit A for a list of registered copyrights; See attached Exhibit B for a full list of titles for which some copyrights may be pending or issued during the current lawsuit.

11. Plaintiff has several registered trademarks, and has applications pending for several others, for its various word and design marks as they are used in connection with DVDs, magazines, websites, streaming video and other forms of media featuring adult entertainment. See attached Exhibit C for a complete list of trademarks owned by Plaintiff or for which applications are pending.

12. Plaintiff has common law trademarks in the various word and design marks mentioned above that are contained in attached Exhibit C as used in connection with DVDs, magazines, websites, streaming video and other forms of media featuring adult entertainment.

13. Plaintiff is recognized nationally and internationally as a leader in the field of production and distribution of adult entertainment due, in large part, to the goodwill and name recognition associated with its trademarks, as well as the high quality content that is associated with its copyrighted material.

14. Defendant Wyche is an individual who operates the forum website www.DGSource.com/forum (hereinafter “DG Source”). DG Source’s website registry information currently lists the site’s owner as Lil Giant Productions (though it was previously listed as TaRon Wyche d/b/a Lil Giant Productions) and the website itself attributes ownership to LGP LLC.

15. A search of business entities, while retrieving multiple “LGP LLCs” or derivations thereof, did not return any results for the purported LGP LLC involved in this lawsuit; nor did the search return any registered entities under the name Lil Giant Productions.

16. On information and belief, Wyche uses these “entities” as a rouse to further confuse and stall the investigations of the owners of the copyrights he helps to infringe.

17. The address listed for the owner of DG Source on WhoIs.com (a domain registry site) is: 540 Largo Center Dr., Apt. 1, Largo, MD 20774. An agent of Flava Works called the apartment complex management for that address on January 21, 2010 and was told that Wyche had moved out of that apartment on August 26, 2008. As of January 21, 2010, the incorrect address was still listed on the domain registry.

18. On information and belief, Wyche is purposefully providing false contact information in an effort to further hinder copyright owners from rightfully asserting their rights against him for infringement.

19. Wyche has created a forum through which he, or his agents, and/or members of the forum (i.e. the John Does) can and do reproduce and distribute copyrighted material, including Flava Works’ Intellectual Property in various sections of the forum. See Exhibit D for a screenshot of the forum.

20. Additionally, the copyrighted material often contains Plaintiff’s trademarks and/or trade dress causing confusion among the general public and trade as to the origin of the infringing material, as well as with Plaintiff’s association with or approval of (or rather lack thereof) Wyche’s website.

21. One section in particular requires members to make at least 100 posts before they are granted access. This section contains a multitude of copyrighted material not available in other sections of the forum or to members that have not posted the requisite number of times.

22. By requiring 100 posts for members to gain access to the section containing “the good stuff,” Wyche is purposefully sabotaging the policing efforts of legal copyright holders,

leaving many of the infringements undiscoverable by normal means of investigation and placing an undue burden on the copyright holders.

23. DG Source has approximately 7,050 to 8,900 users, many of whom have posted material that infringes Flava Works' Intellectual Property in this secret section, or elsewhere.

The most frequent contributors have been named in this complaint as John Does 1-5.

24. John Doe 1 has posted infringing material in excess of ten (10) times under the screen name: BLAZED 7.

25. John Doe 2 has posted infringing material in excess of ten (10) times under the screen name: VIDEOMASTER.

26. John Doe 3 has posted infringing material in excess of ten (10) times under the screen name: TRYPT.

27. John Doe 4 has posted infringing material in excess of ten (10) times under the screen name: SOUFBOUND.

28. John Doe 5 has posted infringing material in excess of ten (10) times under the screen name: MR EVIL.

29. On or about February 20, 2009, Plaintiff became aware of the infringing activities that take place on the forum. See attached Exhibit E for screenshots of the website in which the infringing material is or has been displayed.

30. On or about November 18, 2009, Plaintiff sent, via U.S. Mail, email and/or fax, both Wyche and Wyche's webhosting company, ThePlanet.com (hereinafter "The Planet"), takedown notices pursuant to 17 U.S.C. § 512 *et seq.*, the Digital Millennium Copyright Act ("DMCA takedown notices"), in which notice of the infringing material was given to the

respective entities along with a demand that said material be removed expediently. See attached Exhibit F for copies of the DMCA takedown notices.

31. Sometime between November 18, 2009 and December 2, 2009, Plaintiff was notified that the DMCA notice it had sent to Wyche's physical mailing address, as it was listed on the domain registry, was returned to Plaintiff as undeliverable, because Wyche purposefully provided false or intentionally misleading information to its web hosting company. See attached Exhibit G for copy of undeliverable mail; see attached Exhibit H for copy of false address listing.

32. Over the next few weeks, Plaintiff sent out several additional DMCA notices to Wyche and to The Planet; however, because Plaintiff could not serve the notices upon Wyche through the U.S. Mail, Plaintiff sent these notices via email to Wyche's address:

Pharoahmaxinc@yahoo.com.

33. After receiving these notices, some of the cited infringing material was removed.

34. Over the next weeks and months, Wyche's website was continuously updated with more and more infringing material from its members. Since DG Source has no "repeat infringer policy" to speak of, it has taken no action toward stopping, reprimanding, or banning these repeat infringers. Because of this, DG Source is not eligible for the limitations on liability, or the "safe harbor provisions," provided by 17 U.S.C. § 512 of the DMCA and Wyche, as DG Source's alter ego, remains liable for any and all infringement for which it is directly and/or indirectly responsible.

35. Wyche has not designated a DMCA Agent for DG Source to receive notice for claimed infringement as required by 17 U.S.C. § 512(c)(2), therefore, Wyche, as DG Source's alter ego, remains liable for any and all infringement for which it is directly and/or indirectly responsible. See <http://www.copyright.gov/onlinesp/list>

36. On information and belief, Wyche facilitates and encourages the postings to his website willfully and with full knowledge and awareness of Plaintiff's ownership of Flava Works' Intellectual Property, and with the purpose of freely distributing Flava Works' Intellectual Property to the public at large via Wyche's website and/or increasing Wyche's advertising revenue by increasing site traffic.

37. Through Wyche's and the John Does' conduct, Plaintiff has suffered and continues to suffer damage to its reputation and good will through the unauthorized use, reproduction and distribution of Flava Works' Intellectual Property.

38. Plaintiff will continue to suffer loss of profits and damage to its good will and reputation unless Wyche and the John Does are restrained by this Court.

39. Through Wyche's and the John Does' conduct, Plaintiff has suffered and continues to suffer the loss of the profits it has the right to realize through use, reproduction and distribution of Flava Works' Intellectual Property.

40. Plaintiff cannot be made whole unless this Court awards Plaintiff damages for Wyche's and the John Does' unauthorized use, reproduction and distribution of Flava Works' Intellectual Property.

FIRST CLAIM FOR RELIEF

(Direct Copyright Infringement as to all Defendants – 17 U.S.C. § 501)

41. Plaintiff re-alleges, adopts and incorporates by reference all preceding rhetorical paragraphs.

42. Defendants', Wyche and John Does 1-5, conduct interferes with Plaintiff's exclusive right to reproduce, distribute and display the copyrighted works.

43. Defendants' conduct constitutes copyright infringement that this Court may remedy under Sections 106 and 501 of the Copyright Act.

44. As a result of the injury suffered by Plaintiff's business from Defendants' actions of direct copyright infringement, Plaintiff is entitled to recover actual and/or statutory damages, which shall be determined at trial, and costs of this action, including reasonable attorney's fees, as well as injunctive relief to prevent future infringement.

SECOND CLAIM FOR RELIEF

(Contributory Copyright Infringement as to Defendant Wyche)

45. Plaintiff re-alleges, adopts and incorporates by reference all preceding rhetorical paragraphs.

46. Defendant Wyche owns a website that provides the mechanism through which numerous individuals or entities, including John Does 1-5, without authorization, reproduced and distributed Flava Works' Intellectual Property thereby directly infringing on those copyrighted works.

47. Wyche had actual or constructive knowledge of or was willfully ignorant of the infringing activity and had the obligation and ability to control and stop the infringing activity, yet failed to do so.

48. Wyche aided, abetted, allowed, encouraged and otherwise materially contributed to helping those individuals to reproduce and distribute Flava Works' Intellectual Property through his website without regard to copyright ownership.

49. Wyche's website received direct financial benefits from the infringements by increasing its website traffic and displaying banner ads.

50. Wyche's conduct constitutes contributory copyright infringement that this Court may remedy under Sections 106 and 501 of the Copyright Act.

51. As a result of the injury suffered by Plaintiff's business from Defendant's actions of contributory copyright infringement, Plaintiff is entitled to recover actual and/or statutory damages, which shall be determined at trial, and costs of this action, including reasonable attorney's fees, as well as injunctive relief to prevent future infringement.

THIRD CLAIM FOR RELIEF

(Vicarious Copyright Infringement as to Defendant Wyche)

52. Plaintiff re-alleges, adopts and incorporates by reference all preceding rhetorical paragraphs.

53. Defendant Wyche owns a website that provides the mechanism through which numerous individuals or entities, including John Does 1-5, without authorization, reproduced and distributed Flava Works' Intellectual Property thereby directly infringing on those copyrighted works.

54. Wyche had actual or constructive knowledge of or was willfully ignorant of the infringing activity and had the obligation and ability to control and stop the infringing activity, yet failed to do so.

55. Wyche's website received direct financial benefits from the infringements by increasing its website traffic and displaying banner ads.

56. Wyche's conduct constitutes vicarious copyright infringement that this Court may remedy under Sections 106 and 501 of the Copyright Act.

57. As a result of the injury suffered by Plaintiff's business from Defendant's actions of vicarious copyright infringement, Plaintiff is entitled to recover actual and/or statutory

damages, which shall be determined at trial, and costs of this action, including reasonable attorney's fees, as well as injunctive relief to prevent future infringement.

FOURTH CLAIM FOR RELIEF

(Inducement of Copyright Infringement as to Defendant Wyche)

58. Plaintiff re-alleges, adopts and incorporates by reference all preceding rhetorical paragraphs.

59. Defendant Wyche owns a website that provides the mechanism through which numerous individuals or entities, including John Does 1-5, without authorization, reproduced and distributed Flava Works' Intellectual Property thereby directly infringing on those copyrighted works.

60. By maintaining a secret section of the forum in which a greater selection of unauthorized copyrighted material was available to members that posted infringing material more frequently (i.e. at least 100 times), Defendant Wyche intentionally induced the John Does, among others, to infringe Flava Works' Intellectual Property.

61. Wyche had actual or constructive knowledge of or was willfully ignorant of the infringing activity and had the obligation and ability to control and stop the infringing activity, yet failed to do so.

62. Wyche's website received direct financial benefits from the infringements by increasing its website traffic and displaying banner ads.

63. Wyche's conduct constitutes inducement copyright infringement that this Court may remedy under Sections 106 and 501 of the Copyright Act.

64. As a result of the injury suffered by Plaintiff's business from Defendant's actions of inducement of copyright infringement, Plaintiff is entitled to recover actual and/or statutory

damages, which shall be determined at trial, and costs of this action, including reasonable attorney's fees, as well as injunctive relief to prevent future infringement.

FIFTH CLAIM FOR RELIEF

(False Designation of Origin as to Defendants Wyche)

65. Plaintiff re-alleges, adopts and incorporates by reference all preceding rhetorical paragraphs.

66. By engaging in the activities above, Wyche has caused, is causing or is likely to cause, confusion, mistake or deception among the relevant trade and public as to the existence of an affiliation, connection or association between Plaintiff and DG Source as to the origin, sponsorship or approval of Plaintiff over Wyche's website(s).

67. Defendant has made and is making false, deceptive and misleading representations and false advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

68. Defendant's acts described above have caused irreparable injury to Plaintiff's good will and reputation and, unless enjoined by this court, will cause further irreparable injury, for which Plaintiff has no adequate remedy at law or, in the alternative, as a result of the injury suffered by Plaintiff's business from Defendant's actions, Plaintiff is entitled to recover statutory damages in an amount equal to threefold the actual damages, which shall be determined at trial, and costs of this action, including reasonable attorney's fees.

SIXTH CLAIM FOR RELIEF

(Trademark and Trade Dress Infringement as to Defendant Wyche)

69. Plaintiff re-alleges, adopts and incorporates by reference all preceding rhetorical paragraphs.

70. Defendant's conduct is likely to cause confusion, to cause mistake, or to deceive the relevant trade and public as to the source of Flava Works' Intellectual Property.

71. Defendant's conduct constitutes trademark and trade dress infringement and is in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1114.

72. Defendant's acts described above have caused irreparable injury to Plaintiff's good will and reputation and, unless enjoined by this court, will cause further irreparable injury, for which Plaintiff has no adequate remedy at law or, in the alternative, as a result of the injury suffered by Plaintiff's business from Defendant's actions, Plaintiff is entitled to recover statutory damages in an amount equal to threefold the actual damages, which shall be determined at trial, and costs of this action, including reasonable attorney's fees.

SEVENTH CLAIM FOR RELIEF

(Common Law Trademark Infringement and Unfair Competition as to Defendant Wyche)

73. Plaintiff re-alleges, adopts and incorporates by reference all preceding rhetorical paragraphs.

74. Defendant's conduct is likely to cause confusion, to cause mistake, and/or to deceive the relevant trade and public as to the existence of an affiliation, connection or association between Plaintiff and Defendant as to the origin, sponsorship or approval of Plaintiff over Defendant's website(s).

75. Defendant's acts constitute common law trademark infringement and unfair competition under the laws of the State of Illinois.

76. Defendant's acts described above have caused irreparable injury to Plaintiff's good will and reputation and, unless enjoined by this court, will cause further irreparable injury, for which Plaintiff has no adequate remedy at law or, in the alternative, as a result of the injury

suffered by Plaintiff's business from Defendant's actions, Plaintiff is entitled to recover damages, which shall be determined at trial, and costs of this action, including reasonable attorney's fees.

WHEREFORE Plaintiff, Flava Works, Inc. respectfully requests that this Honorable Court enter a judgment in its favor and against Defendant TaRon Wyche, d/b/a www.DGSource.com, d/b/a Lil Giant Productions, d/b/a LGP LLC :

1. For a temporary restraining order, preliminary injunction, and permanent injunction against TaRon Wyche, his aliases, his agents, servants, representatives, employees, attorneys, parents, subsidiaries, related companies, partners, successors, predecessors, assigns, and all persons acting for, with, by, through, or under him and each of them:
 - a. Restraining and enjoining him from posting on his website(s) material that infringes Flava Works' Intellectual Property, as well as from facilitating the posting on his website(s) by third parties infringing material and/or links which enable the easy access to Flava Works' Intellectual Property that is located on third party websites;
 - b. Restraining and enjoining him from otherwise distributing, reproducing, using, copying, streaming, making available for download, or otherwise exploiting Flava Works' Intellectual Property, including Plaintiff's copyrighted works, trademarks, trade dress, or any other product or symbol with the indicia of Plaintiff's ownership, through use of his website(s) or otherwise;
 - c. Restraining and enjoining him from doing any other act, through his website(s) or otherwise, which shall confuse, deceive, cause mistake, etc.

among the relevant trade and general public as to the association, sponsorship and/or approval between Plaintiff and Defendant's website(s);

2. Requiring Defendant to submit to the Court and to serve upon Plaintiff a report, written under oath, setting forth in detail the manner and form in which Defendant has complied with the terms of this injunction;
3. Requiring Defendant to cease operation of the website domain www.dgsource.com and to transfer ownership of www.dgsource.com immediately to Plaintiff;
4. Disgoring Defendant of any profits he may have made as a result of his infringement of Flava Works' Intellectual Property;
5. Awarding Plaintiff the actual damages sustained by Plaintiff as a result of Defendant's infringement of Flava Works' Intellectual Property, the amount of which to be determined at trial;
6. Awarding Plaintiff compensatory and punitive damages, as deemed just and proper by this Court, as a result of the willful misconduct on the part of Defendant;
7. Awarding Plaintiff the costs of this action, together with reasonable attorney's fees;
8. Awarding Plaintiff statutory damages pursuant to the Copyright Act and the Lanham Act;
9. Awarding Plaintiff enhanced statutory damages, pursuant to 15 U.S.C. § 504(c)(2) of the Copyright Act, for Defendant's willful infringement of Plaintiff's copyrighted works;
10. Awarding Plaintiff enhanced statutory damages, pursuant to 15 U.S.C. § 1117(c)(2) of the Lanham Act, for Defendant's willful use of counterfeit marks;

11. Containing any such other and further relief as this Court deems just, reasonable and equitable;

And **WHEREFORE** Plaintiff, Flava Works, Inc. respectfully requests that this Honorable Court enter a judgment in its favor and against Defendants John Does 1-5:

1. For a temporary restraining order, preliminary injunction, and permanent injunction against them, their aliases, their agents, servants, representatives, employees, attorneys, parents, subsidiaries, related companies, partners, successors, predecessors, assigns, and all persons acting for, with, by, through, or under them:
 - a. Restraining and enjoining them from posting on the DG Source website material that infringes Flava Works' Intellectual Property, as well as from facilitating the posting on the website of links which enable the easy access to Flava Works' Intellectual Property that is located on third party websites;
 - b. Restraining and enjoining them from otherwise distributing, reproducing, using, copying, streaming, making available for download, or otherwise exploiting Flava Works' Intellectual Property, including Plaintiff's copyrighted works, trademarks, trade dress, or any other product or symbol with the indicia of Plaintiff's ownership, through use of DGSource.com or otherwise;
2. Requiring Defendants to submit to the Court and to serve upon Plaintiff a report, written under oath, setting forth in detail the manner and form in which Defendants have complied with the terms of this injunction;

3. Awarding Plaintiff the actual damages sustained by Plaintiff as a result of Defendants' infringement of Flava Works' Intellectual Property, the amount of which to be determined at trial;
4. Awarding Plaintiff compensatory and punitive damages, as deemed just and proper by this Court, as a result of the willful misconduct on the part of Defendants;
5. Awarding Plaintiff the costs of this action, together with reasonable attorney's fees;
6. Awarding Plaintiff statutory damages pursuant to the Copyright Act;
7. Awarding Plaintiff enhanced statutory damages, pursuant to 15 U.S.C. § 504(c)(2) of the Copyright Act, for Defendants' willful infringement of Plaintiff's copyrighted works;
8. Containing any such other and further relief as this Court deems just, reasonable and equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues properly triable by jury in this action, pursuant to Rule 38 of the Federal Rules of Civil Procedure.

DATED: January X, 2010

Respectfully Submitted,

By: _____
Jesse Lanshe (Att. No. 6300294)
In-House Counsel
Flava Works, Inc.

933 W. Irving Pk. Rd., Ste. C
Chicago, IL 60613
305-438-9450
Attorney for the Plaintiff
jesse@flavaworks.com