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NORTHERN DISTRICT OF CALIFORNIA

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E-filing

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

JL

12) CASE NO.:
13) **CV 08 3823**
14) COMPLAINT:

15 IO GROUP, INC., a California corporation,
16)
17 Plaintiff,
18 vs.
19 GLBT LIMITED, a British limited
20 company doing business as gayforit.com,
21 and DOES 1 through 25 inclusive,
22 Defendants.

- 23) (1) COPYRIGHT INFRINGEMENT
- 24) (reproduction, public performance and
- 25) public display);
- 26) (2) CONTRIBUTORY COPYRIGHT
- 27) INFRINGEMENT;
- 28) (3) VICARIOUS COPYRIGHT
- 29) INFRINGEMENT;
- 30) (4) INDUCEMENT OF COPYRIGHT
- 31) INFRINGEMENT;
- 32) (5) TRADEMARK INFRINGEMENT
- 33) (False Designation of Origin);
- 34) (6) MISAPPROPRIATION OF RIGHT
- 35) OF PUBLICITY (Common Law and
- 36) Cal. Civ. Pro. § 3344);
- 37) (7) UNFAIR BUSINESS PRACTICES
- 38) (Cal. B&P Code §17200);
- 39) (8) UNFAIR BUSINESS PRACTICES
- 40) (Cal. B&P Code §17200 and 18 U.S.C.
- 41) §2257); and
- 42) (9) AN ACCOUNTING

JURY TRIAL DEMANDED

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INTRODUCTION

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1. This is an action by IO GROUP, INC. a California corporation, d/b/a Titan Media (“Titan Media”), to recover damages arising from infringement of Titan Media’s copyrights in its creative works by defendants GLBT, LIMITED, (hereinafter LGBT) a British Limited Company, and DOES 1 through 25 and to enjoin defendants from future infringement. Defendants reproduced, distributed and publicly displayed certain Titan Media-owned works by and through gayforit.com, an Internet website which GLBT owns, operates and controls.

THE PARTIES

2. Io Group, Inc. is a California corporation doing business as “Titan Media,” with its principal place of business located at 69 Converse Street, San Francisco, California 94103. Titan Media produces, markets, and distributes adult entertainment products, including Internet website content, videos, DVDs, photographs, etc.

3. Defendant GLBT, LIMITED, is a British Limited business with its principle place of business in Eastleigh in the United Kingdom. Plaintiff is informed and believes and based thereon alleges that GLBT has two stockholders, Steven John Compton and David Graham Compton, both of whom also serve as the company’s only directors and that David Graham Compton serves as its sole employee. GLBT does business as gayforit.com and operates a website at gayforit.com, where individuals post video files for others to view. GLBT earns revenue by selling memberships to view the video files it obtains from individuals. GLBT directly competes with plaintiff in the distribution and sale of adult-oriented, audiovisual works by and through the Internet.

4. The true names and capacities, whether individual, corporate, affiliate, or otherwise, of Defendant DOES 1-25, inclusive, are presently unknown to plaintiff, and for that

1 reason those defendants are sued by such fictitious names. Plaintiff is informed and believes and
2 based thereon alleges that each of the DOE defendants is in some way responsible for the damages
3 herein alleged. Plaintiff will amend this Complaint when the true names and capacities of the
4 DOE defendants become known.

5
6 5. Plaintiff is informed and believes and based thereon alleges that each of the
7 defendants, including the fictitiously named DOE defendants, was and is the agent and
8 representative of the other defendants, acting within the purpose and scope of said agency and
9 representation. Plaintiff is further informed and believes and based thereon alleges that each of the
10 defendants, including those fictitiously named DOE defendants, authorized and ratified the
11 conduct herein alleged of each of the other defendants.
12

13 **JURISDICTION**

14 6. This is a civil action for injunctive relief and damages for copyright infringement
15 under the Copyright Act, 17 U.S.C. §101 *et seq.*; trademark infringement (false designation of
16 origin), 15 U.S.C. §1125; misappropriation of the right of publicity under common law and
17 California's Civil Code §3344; and unfair business practices under California's Business and
18 Professions Code §17200, *et seq.*
19

20 7. This Court has subject matter jurisdiction over plaintiff's claims for copyright
21 infringement, trademark infringement and related claims pursuant to 17 U.S.C. §§ 101, *et. seq.*, 15
22 U.S.C. §1117 *et seq.* and 28 U.S.C. §§ 1331 and 1338(a) and (b).
23

24 8. This Court has supplemental jurisdiction over plaintiff's claims arising under the
25 laws of California pursuant to 28 U.S.C. § 1367(a) because these claims are so related to
26 plaintiff's claims under Federal Law that they form part of the same case or controversy and
27 derive from a common nucleus of operative facts.
28

1 range of video files. Businesses, including plaintiff's business have taken advantage of these new
2 technologies to deliver entertainment options to potential customers.

3 15. Unfortunately, rapidly changing technologies have also provided increased
4 opportunity for those wishing to circumvent the rights of copyright holders. Some businesses
5 have created and/or operated Internet websites that blatantly copy and infringe audio visual works
6 belonging to others. Defendants operate just such a site.

7
8 16. Defendants have used technological advancements to engage in massive willful
9 infringement of copyrights belonging to plaintiff and others and has thus deprived plaintiff of the
10 lawful rewards that accompany creativity, effort and entrepreneurship. Defendants' blatant
11 disregard for copyright laws threatens plaintiff's business and the businesses of others.

12
13 17. Plaintiff has won numerous awards for its high quality work, beginning with an
14 award for Best Gay Video in its first year in existence (1995). Since then plaintiff has won awards
15 nearly every year including awards for Best Art Direction, Best Videography, Best Packaging,
16 Best DVD Extras, Best Cinematography and Best Editing. Plaintiff is recognized throughout the
17 industry as one of the highest quality producers of gay erotica.

18
19 18. The audiovisual works at issue in this action are of obvious high production value
20 and are easily discernable as professional works. Plaintiff created the works using professional
21 performers, directors, cinematographers, lighting technicians, set designers and editors. Plaintiff
22 created the works using professional grade cameras, lighting and editing equipment.

23
24 19. gayforit.com, the offending website at issue in this action and the website from
25 which plaintiff's works are being infringed, is registered to LBGT, Limited, David Compton, 12
26 Wood End Way, Knightwood, Eastleigh, Hampshire S053 4LN, Great Britan.
27
28

1 20. Defendants solicit individuals to supply gay oriented, adult themed, sexually
2 explicit works for reproduction, distribution and public display by and through the highly
3 interactive website gayforit.com. Individuals supply thousands of videos many of which belong to
4 plaintiff and other producers and which are transferred and exploited without authorization.
5

6 21. Plaintiff is informed and believes and based thereon alleges that after individuals
7 supply defendants with video files, defendants, reproduce, reformat and publicly display the works
8 without determining the ownership of the works, without properly licensing the works, without
9 evaluating the rights of publicity of the individuals appearing in the works, and without verifying
10 the age of the individuals appearing in the works.
11

12 22. Defendants earn revenue by selling memberships to view the video files it obtains
13 from individuals.
14

15 23. Plaintiff is informed and believes and based thereon alleges that each act of
16 infringement complained of herein occurred from the base domain gayforit.com and occurred on
17 computer servers owned, operated and/or controlled by defendants. Plaintiff is further informed
18 and believes and based thereon alleges that defendants host gayforit.com on servers located in
19 Chicago, Illinois and have registered the domain name through a registrar located in Bellevue,
20 Washington.
21

22 24. Plaintiff is informed and believes and based thereon alleges that defendants'
23 unauthorized reproduction, public display and distribution of plaintiff's works serve as a draw,
24 attracting many individuals to purchase memberships to access gayforit.com.
25

26 25. Defendants actively engage in, promote and induce copyright infringement.
27 Defendants reproduce, distribute and publicly display Io Group's works on gayforit.com.
28

1 26. Plaintiff's employees discovered and documented that defendants have reproduced
2 and are displaying and distributing by and through gayforit.com at least fifty-five (55)
3 unauthorized video files of Io Group works and that customers have viewed those unauthorized
4 files over five hundred thousand (500,000) times.
5

6 27. Plaintiff is informed and believes and based thereon alleges that defendants'
7 business plan depends on the uploading, posting, display and performance of copyrighted
8 audiovisual works belonging to Io Group, Inc. and others. In other words, defendants deliberately
9 and knowingly built a library of infringing works to draw Internet traffic to the subject website,
10 enabling defendants to sell memberships to view the works while also increasing the value of their
11 business and earning vast amounts of revenue.
12

13 28. Plaintiff is informed and believes and based thereon alleges that defendants have
14 deliberately chosen not to take reasonable precautions to deter the rampant copyright infringement
15 on their gayforit.com website. Defendants make no attempt to identify the individuals providing
16 the works, where the individuals obtained the works, or whether the individuals have authority to
17 further reproduce and distribute the works. Instead of attempting to monitor the uploading of
18 works to their website, defendants have decided to shift the burden onto copyright owners to
19 monitor the website on a continual basis to detect infringing files and to send notices to defendants
20 demanding that they take down the infringing files. Defendants have willfully chosen this
21 approach because it allows them to profit from infringement while leaving copyright owners, such
22 as plaintiff, with the continued expense of monitoring the website and without sufficient means to
23 prevent continued infringement in the future.
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26 29. Prior to releasing its works into the market in DVD format, plaintiff marks each
27 with plaintiff's copyright notice and its trademark.
28

1 adequate remedy at law for defendants' wrongful conduct because, among other things, (a)
2 plaintiff's copyrights are unique and valuable property which have no readily determinable market
3 value, (b) defendants' infringement harms plaintiff's business reputation and goodwill such that
4 plaintiff could not be made whole by any monetary award, and (c) defendants' wrongful conduct,
5 and resulting damage to plaintiff is continuing. Pursuant to 17 U.S.C. §502, plaintiffs are entitled
6 to preliminary and permanent injunctive relief prohibiting further infringement of plaintiff's
7 copyrights.

8
9 50. In addition, plaintiff is entitled to recover its attorneys' fees and costs of suit
10 pursuant to 17 U.S.C. § 505.
11

12 **SECOND CAUSE OF ACTION**

13 **(Contributory Copyright Infringement)**

14 51. Plaintiff repeats and incorporates by this reference each and every allegation set
15 forth in paragraphs 1 through 50, inclusive.
16

17 52. Without authorization, individuals have reproduced, distributed and publicly
18 displayed plaintiff's works by and through gayforit.com thereby directly infringing plaintiff's
19 copyrighted works.
20

21 53. Defendants contributed to the infringing acts of those individuals and allowed and
22 encouraged those individuals to reproduce, distribute and publicly display plaintiff's works by and
23 through gayforit.com without regard to the ownership of the works.

24 54. Defendants had knowledge of those infringing acts.

25 55. The acts and conduct of defendants, as alleged above in this Complaint constitute
26 contributory copyright infringement.
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1 **THIRD CAUSE OF ACTION**

2 **(Vicarious Copyright Infringement)**

3 56. Plaintiff repeats and incorporates by this reference each and every allegation set
4 forth in paragraphs 1 through 55, inclusive.
5

6 57. Without authorization, individuals have reproduced, distributed and publicly
7 displayed plaintiff's works by and through gayforit.com thereby directly infringing plaintiff's
8 copyrighted works. Defendants had the right and ability to control the infringing acts of the
9 individuals who provided plaintiff's works to gayforit.com as described above.
10

11 58. Defendants obtained a direct financial benefit from those infringing activities.

12 59. The acts and conduct of defendants, as alleged above in this Complaint constitute
13 vicarious copyright infringement.

14 **FOURTH CAUSE OF ACTION**

15 **(Inducement of Copyright Infringement)**

16 60. Plaintiff repeats and incorporates by this reference each and every allegation set
17 forth in paragraphs 1 through 59, inclusive.
18

19 61. Defendant has designed, distributed, and made available technology and devices
20 with the object and intent of promoting their use to infringe copyrighted materials. As a direct and
21 proximate result of such inducement individuals have infringed plaintiff's copyrighted works by
22 reproducing, distributing and publicly performing such works by and through gayforit.com.
23

24 62. Defendants' acts of inducement of infringement were willful, in disregard of and
25 with indifference to plaintiff's rights.
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1 **FIFTH CAUSE OF ACTION**

2 **(Trademark Infringement - False Designation of Origin)**

3 63. Plaintiff repeats and incorporates by this reference each and every allegation set
4 forth in paragraphs 1 through 62, inclusive.
5

6 64. Plaintiff Io Group, Inc. has applied for and registered the marks TitanMedia®,
7 TitanMen®, and ManPlay® with the United States Patent and Trademark Office. Io Group has
8 also obtained through assignment the mark MSR Videos®.
9

10 65. Defendants provide identical services as plaintiff, to the same market, namely,
11 providing gay adult content for viewing via the Internet. Defendants compete directly with
12 plaintiff.
13

14 66. Defendants display Io Group's works on the website, gayforit.com and displays the
15 mark "gayforit.com" above and immediately adjacent to the works as they display. Defendants
16 also misrepresents the origin of the works by displaying at the bottom of each webpage from
17 which the works are viewable a label that reads "Copyright (c) 2006-2008 GLBT Limited – All
18 rights reserved".
19

20 67. Defendants' use of the mark "gayforit.com" in connection with displaying Io
21 Group's works constitutes a use in commerce that is likely to cause confusion and mistake and to
22 deceive consumers as to the source or origin of the works displayed on and distributed by and
23 through the website gayforit.com. Defendants' use has a tendency to deceive or confuse
24 consumers into believing that defendants' services are affiliated with Io Group's works, are
25 sponsored or approved of by Io Group, or are otherwise associated with or authorized by Io
26 Group.
27
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1 68. By engaging in the activities described above, defendants have made and are
2 making false, deceptive, and misleading statements constituting unfair competition, false
3 representations, false designation of origin, and false advertising made in connection with services
4 distributed in interstate commerce in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §
5 1125(a).
6

7 69. Plaintiff is informed and believes and based thereon alleges that defendants are
8 engaging in this course of action willfully and with full knowledge and awareness of the superior
9 trademark rights of plaintiff, and with the purpose an intent of confusing the relevant trade and
10 public into mistakenly believing that defendants' services are associated with, affiliated with, or
11 licensed by plaintiff.
12

13 70. Defendants' acts of unfair competition and false advertising have caused and are
14 causing great and irreparable injury to Io Group and its TitanMedia®, TitanMen®, ManPlay® and
15 MSR Videos® marks and to the services and goodwill represented thereby, in an amount that
16 cannot be ascertained at this time and, unless restrained, will cause further irreparable injury,
17 leaving Io Group with no adequate remedy at law.
18

19 71. By reason of the foregoing, Io Group is entitled to injunctive relief against
20 defendants, restraining further acts of unfair competition, false designation of origin, and false
21 advertising, and to recover attorneys' fees and any damages proven to have been caused by reason
22 of defendants' aforesaid acts of unfair competition, false designation of origin, false
23 representation, and false advertising.
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1 **SIXTH CAUSE OF ACTION**

2 **(Misappropriation of the Right of Publicity (Common Law and Cal. Civ. Pro. § 3344))**

3 72. Plaintiff repeats and incorporates by this reference each and every allegation set
4 forth in paragraphs 1 through 71, inclusive.
5

6 73. Plaintiff's copyrighted works embody images of performers all of whom executed
7 written agreements through which plaintiff became the exclusive proprietor of the actors' rights of
8 publicity in the performances embodied in plaintiff's creative works.
9

10 74. All rights of publicity in respect to those images have at all times been exclusively
11 administered from within Los Angeles, California and San Francisco, California.

12 75. Defendants infringed the rights of publicity owned and controlled by plaintiff by
13 displaying audiovisual works of the performers for commercial gain without plaintiff's consent.
14

15 76. As a direct and proximate result of defendants' conduct as aforesaid, plaintiff has
16 been damaged by lost income in an amount to be determined at trial.

17 77. Defendants acted deliberately to injure plaintiff and otherwise in conscious
18 disregard of plaintiff's rights. Further, defendants performed these acts, or otherwise authorized,
19 ratified or had knowledge of them and thereby acted in conscious disregard of plaintiff's rights.
20

21 78. The acts and conduct of defendants as alleged above in this Complaint constitute a
22 misappropriation of the right of publicity pursuant to the common law of California.

23 79. The acts and conduct of defendants as alleged above in this Complaint constitute a
24 misappropriation of the right of publicity in the form of the unauthorized commercial use of a
25 photograph in violation of California Civil Code §3344.
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1 Plaintiff is informed and believes and based thereon alleges, such violations include defendants
2 failure to follow the labeling requirements pursuant to 18 U.S.C. §2257, for the videos and video
3 clips shown on their website, gayforit.com.
4

5 92. Defendants' aforesaid failure to follow the labeling requirements violate 18 U.S.C.
6 §2257 and, consequently, constitutes an unlawful business practice within the meaning of
7 Business & Professions Code §17200, *et seq.*

8 93. As a direct and proximate result of the aforementioned acts, defendants receive and
9 continue to receive an economic benefit by violating 18 U.S.C. §2257.
10

11 94. Defendants have engaged in, and are continuing to engage in, fraudulent, unfair and
12 unlawful conduct including, but not limited to, transferring or selling actually sexually explicit
13 material without proper labeling as required under 18 U.S.C. §2257.

14 95. Injury to plaintiff is continuing and will continue unless defendants' actions are
15 restrained by the Court. Unless defendants are enjoined from engaging in their wrongful conduct,
16 plaintiff will suffer further irreparable injury and harm, for which plaintiff has no adequate remedy
17 at law.
18

19 96. Plaintiff is entitled to a permanent injunction, and a preliminary injunction pending
20 the hearing and final determination of this action, enjoining defendants from the acts of unfair,
21 unlawful and fraudulent business practices set forth above, and to reasonable attorneys' fees and
22 costs of suit.
23

24 **NINTH CAUSE OF ACTION**

25 (Accounting)

26 97. Plaintiff repeats and incorporates by this reference each and every allegation set
27 forth in paragraphs 1 through 96, inclusive.
28

1 any other infringing use or infringing distribution of plaintiff's audiovisual works, photographs or
2 other materials;

3 (3) That the Court issue injunctive relief against defendants, and that defendants, their
4 agents, representatives, servants, employees, attorneys, successors and assigns, and all others in
5 active concert or participation with it, be enjoined and restrained from engaging in further acts of
6 unfair competition, false designation of origin, and false advertising;

8 (4) That the Court enter an order of impoundment pursuant to 17 U.S.C. §§ 503 and
9 509(a) impounding all infringing copies of plaintiff's audiovisual works, photographs or other
10 materials, which are in defendants' possession or under their control;

12 (5) That the Court enter an order requiring a full and complete accounting of all
13 amounts due and owing to plaintiff as a result of defendants' illegal activities;

14 (6) That the Court order defendants to pay plaintiff's general, special, actual and
15 statutory damages as follows:

17 a. Plaintiff's damages and defendants' profits pursuant to 17 U.S.C. § 504(b), or
18 in the alternative, maximum enhanced statutory damages of \$150,000 per
19 infringed work pursuant to 17 U.S.C. § 504(c)(2), for defendants' willful
20 infringement of plaintiff's copyrights;

22 b. Plaintiff's damages and defendants' profits or alternatively statutory damages
23 pursuant to 15 U.S.C. § 1117;

24 c. Plaintiff's damages and defendants' profits pursuant to Cal. Civ. Code § 3344
25 or in the alternative statutory damages pursuant to Cal. Civ. Code § 3344, plus
26 punitive damages pursuant to Cal. Civ. Code § 3344; and
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d. Pursuant to Business and Professions Code §§ 17203 and 17535, and pursuant to the equitable powers of this Court, plaintiff prays that the Court order defendants to restore all funds acquired by means or any act or practice found by this Court to be unlawful or fraudulent or to constitute unfair competition under Business and Professions Code §17200 *et seq.*

(7) That the Court order defendants to pay plaintiff both the costs of this action and the reasonable attorney's fees incurred by it in prosecuting this action pursuant to 17 U.S.C. § 504, 15 U.S.C. §1117, Cal. Civ. Code § 3344(a); and Cal. Code Civ. Pro. §1021.5.

(8) That the Court order Defendants to pay pre and post judgment interest according to law; and

(9) That the Court grant to Plaintiff such other and additional relief as is just and proper.

Dated: 8/11/2008

Respectfully submitted,

/s/ Gill Sperlein

GILL SPERLEIN
THE LAW OFFICE OF GILL SPERLEIN
Attorney for Plaintiff IO GROUP, INC.

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CERTIFICATION OF INTERESTED PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that the following listed persons (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

Bruce Lahey – majority shareholder of Io Group, Inc.

Brian Ashby – minority shareholder of Io Group, Inc.

Dated: 8/11/2008

Respectfully submitted,

/s/ Gill Sperlein

GILL SPERLEIN
THE LAW OFFICE OF GILL SPERLEIN
Attorney for Plaintiff IO GROUP, INC.

ATTACHMENT A

| Title | Registration Number |
|----------------------------------|-----------------------------|
| <i>110° in Tucson</i> | PA 1-290-634 |
| <i>Boner</i> | PA 990-715 |
| <i>Copshack on the 101</i> | PA 1-352-001 |
| <i>Desert Train</i> | PA 984-689; PA 1-007-966 |
| <i>First Crush Fresh Cut</i> | PA 1-232-826 |
| <i>Gale Force: Mensroom 2</i> | PA 1-302-642 |
| <i>Heat</i> | PA 1-017-633 |
| <i>Hell Room</i> | PA 1-315-911 |
| <i>Island Guardian</i> | PA 984-693 |
| <i>Joe Gage Sex Files Vol. 3</i> | PA 1-230-117 |
| <i>Lifeguard</i> | Pending |
| <i>River Patrol</i> | PA 885-073; PA 1-086-865 |
| <i>Spy Quest</i> | PA 1-252-223 |
| <i>Tag Team</i> | PA 992-998 |
| <i>Telescope</i> | Pending |
| <i>Tough Guys</i> | PA 1-316-771 |
| <i>Trespass</i> | PA 846-727 |
| <i>White Trash</i> | PA 1-230-104 |