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1 GILL SPERLEIN (172887)
2 THE LAW OFFICE OF GILL SPERLEIN
3 584 Castro Street, Suite 849
4 San Francisco, California 94114
5 Telephone: (415) 378-2625
6 Facimilie: (415) 487-1211 X32
7 legal@titanmedia.com

8 Attorney for Plaintiff
9 IO GROUP, INC.

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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

PVT

12)
13) **CV 08 4050**
14)

15) **COMPLAINT:**

16 IO GROUP, INC., a California corporation,

17 Plaintiff,

18 vs.

19 ANTELOPE MEDIA, LLC, an Arizonian
20 limited liability company, and DOES 1
21 through 5 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**
-) **INFRINGEMENT;**
-) (4) **INDUCEMENT OF COPYRIGHT**
-) **INFRINGEMENT;**
-) (5) **TRADEMARK INFRINGEMENT**
-) **(False Designation of Origin);**
-) (6) **MISAPPROPRIATION OF RIGHT**
-) **OF PUBLICITY (Common Law and**
-) **Cal. Civ. Pro. § 3344);**
-) (7) **UNFAIR BUSINESS PRACTICES**
-) **(Cal. B&P Code §17200 and 18 U.S.C.**
-) **§2257); and**
-) (8) **AN ACCOUNTING**

JURY TRIAL DEMANDED

1 based thereon alleges that each of the DOE defendants is in some way responsible for the damages
2 herein alleged. Plaintiff will amend this Complaint when the true names and capacities of the
3 DOE defendants become known.

4
5 5. Plaintiff is informed and believes and based thereon alleges that each of the
6 defendants, including the fictitiously named DOE defendants, was and is the agent and
7 representative of the other defendants, acting within the purpose and scope of said agency and
8 representation. Plaintiff is further informed and believes and based thereon alleges that each of the
9 defendants, including those fictitiously named DOE defendants, authorized and ratified the
10 conduct herein alleged of each of the other defendants.
11

12 **JURISDICTION**

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

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

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

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

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

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

20 19. monstercocktube.com, the offending website at issue in this action and the website
21 from which plaintiff's works are being infringed, is registered to Antelope Media., LLC, 304 East
22 Beth Drive, Phoenix, Arizona, 85042.

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 monstercocktube.com. Individuals supply thousands of videos many of which
4 belong to plaintiff and other producers and which are transferred and exploited without
5 authorization.
6

7 21. Plaintiff is informed and believes and based thereon alleges that after individuals
8 supply defendants with video files, defendants, reproduce, reformat and publicly display the works
9 without determining the ownership of the works, without properly licensing the works, without
10 evaluating the rights of publicity of the individuals appearing in the works, and without verifying
11 the age of the individuals appearing in the works.
12

13 22. Defendants earn revenue by selling memberships to view the video files it obtains
14 from individuals and by selling advertising space, to entities whose advertisements then appear on
15 the website during the display and performance of the video files.
16

17 23. Plaintiff is informed and believes and based thereon alleges that each act of
18 infringement complained of herein occurred from the base domain monstercocktube.com and
19 occurred on computer servers owned, operated and/or controlled by defendants. Plaintiff is further
20 informed and believes and based thereon alleges that defendants host monstercocktube.com on
21 servers located in Egg Harbor, New Jersey and have registered the domain name through a domain
22 registrar with its company headquarters located in Poway, California.
23

24 24. Plaintiff is informed and believes and based thereon alleges that defendants'
25 unauthorized reproduction, public display and distribution of plaintiff's works serve as a draw,
26 attracting many individuals to purchase memberships to access monstercocktube.com.
27
28

1 25. Defendants actively engage in, promote and induce copyright infringement.
2 Defendants reproduce, distribute and publicly display Io Group's works on monstercocktube.com.

3 26. Plaintiff's employees discovered and documented that defendants have reproduced
4 and are displaying and distributing by and through monstercocktube.com at least five (5)
5 unauthorized video files of Io Group works and that customers have viewed those unauthorized
6 files over fourteen thousand (14,000) times.

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

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 the monstercocktube.com website. Defendants make no attempt to identify the individuals
16 providing the works, where the individuals obtained the works, or whether the individuals have
17 authority to further reproduce and distribute the works. Instead of attempting to monitor the
18 uploading of works to their website, defendants have decided to shift the burden onto copyright
19 owners to monitor the website on a continual basis to detect infringing files and to send notices to
20 defendants demanding that they take down the infringing files. Defendants have willfully chosen
21 this approach because it allows them to profit from infringement while leaving copyright owners,
22 such as plaintiff, with the continued expense of monitoring the website and without sufficient
23 means to prevent continued infringement in the future.
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1 41. Defendants reproduced, reformatted, publicly displayed, and distributed plaintiff's
2 copyright protected works by and through servers and/or other hardware owned, operated and/or
3 controlled by defendants.
4

5 Defendants Willfully Infringed Plaintiff's Registered Copyrights

6 42. Defendants infringed the copyrights in plaintiff's creative works by reproducing,
7 distributing, and publicly displaying the works by and through the monstercocktube.com website
8 without proper approval or authorization of plaintiff.

9 43. Defendants knew they did not have permission to exploit plaintiff's works on the
10 monstercocktube.com website and knew or should have known their acts constituted copyright
11 infringement.
12

13 44. Plaintiff is informed and believes and based thereon alleges that defendants made
14 no attempt to discover the proper owners of the works before exploiting them, nor did they take
15 measures to determine whether the works had been properly licensed.
16

17 45. Defendants' conduct was willful within the meaning of the Copyright Act. At a
18 minimum, defendants acted with willful blindness to and in reckless disregard of plaintiff's
19 registered copyrights.
20

21 46. As a result of their wrongful conduct, defendants are liable to plaintiff for copyright
22 infringement pursuant to 17 U.S.C. § 501. Plaintiff has suffered, and will continue to suffer,
23 substantial losses, including but not limited to damage to its business reputation and goodwill.

24 47. Plaintiff is entitled to recover damages, which include its losses and any and all
25 profits defendants have made as a result of their wrongful conduct. 17 U.S.C. § 504.

26 Alternatively, plaintiff is entitled to statutory damages under 17 U.S.C. § 504(c).
27
28

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

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

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.
26
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1 follow the labeling requirements pursuant to 18 U.S.C. §2257, for the videos and video clips
2 shown on their website, monstercocktube.com.

3
4 86. Defendants' aforesaid failure to follow the labeling requirements violate 18 U.S.C.
5 §2257 and, consequently, constitutes an unlawful business practice within the meaning of
6 Business & Professions Code §17200, *et seq.*

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

9
10 88. Defendants have engaged in, and are continuing to engage in, fraudulent, unfair and
11 unlawful conduct including, but not limited to, transferring or selling actually sexually explicit
12 material without proper labeling as required under 18 U.S.C. §2257.

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

17
18 90. Plaintiff is entitled to a permanent injunction, and a preliminary injunction pending
19 the hearing and final determination of this action, enjoining defendants from the acts of unfair,
20 unlawful and fraudulent business practices set forth above, and to reasonable attorneys' fees and
21 costs of suit.

22
23 **EIGHTH CAUSE OF ACTION**

24 **(Accounting)**

25 91. Plaintiff repeats and incorporates by this reference each and every allegation set
26 forth in paragraphs 1 through 90, inclusive.
27
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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;
7

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;
11

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:
16

- 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;
- 21 b. Plaintiff's damages and defendants' profits or alternatively statutory damages
22 pursuant to 15 U.S.C. § 1117;
- 23 c. Plaintiff's damages and defendants' profits pursuant to Cal. Civ. Code § 3344
24 or in the alternative statutory damages pursuant to Cal. Civ. Code § 3344, plus
25 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: 8/25/08

Respectfully submitted,



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

EXHIBIT A

ATTACHMENT A

Title	Registration Number
<i>110° in Tucson</i>	PA 1-290-634
<i>Cirque Noir</i>	PA 1-304-272
<i>Crossing the Line</i>	PA 1-366-927
<i>Telescope</i>	Pending
<i>Sea Men Fallen Angel V</i>	PA 1-065-767