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13  
14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 PERFECT 10, INC., a California  
corporation,

17 Plaintiff,

18 v.

19 GOOGLE, INC., a corporation; and  
20 DOES 1 through 100, inclusive,

21 Defendants.

CASE NO. \_\_\_\_\_

COMPLAINT FOR:

(1) DIRECT COPYRIGHT  
INFRINGEMENT; (2)  
CONTRIBUTORY COPYRIGHT  
INFRINGEMENT; (3) VICARIOUS  
COPYRIGHT INFRINGEMENT; (4)  
CIRCUMVENTION OF COPYRIGHT  
PROTECTION SYSTEMS; (5) DIRECT  
TRADEMARK INFRINGEMENT; (6)  
CONTRIBUTORY TRADEMARK  
INFRINGEMENT; (7) VICARIOUS  
TRADEMARK INFRINGEMENT; (8)  
TRADEMARK DILUTION  
(FEDERAL); (9) UNFAIR  
COMPETITION; (10) WRONGFUL  
USE OF A REGISTERED MARK; (11)  
TRADEMARK DILUTION (STATE);  
(12) VIOLATION OF RIGHTS OF  
PUBLICITY

DEMAND FOR JURY TRIAL

1 Plaintiff Perfect 10, Inc. (“Perfect 10”) avers:  
2

3 **JURISDICTION AND VENUE**

4 1. Jurisdiction. This action arises under the Copyright Act, 17 U.S.C.  
5 § 101 *et seq.*, and the Lanham Act, 15 U.S.C. § 1051 *et seq.* This Court has  
6 jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331,  
7 1338(a) and (b) and principles of supplemental jurisdiction.

8 2. Venue. Venue is proper in this Court pursuant to 28 U.S.C. § 1391  
9 (b)(2), (c), and § 1400(a).

10 3. Personal Jurisdiction. Personal jurisdiction is proper over the  
11 Defendants because they either reside in California or the wrongful activity at issue  
12 concerns Defendants’ operation of commercial businesses through which  
13 Defendants’ knowingly transact business and enter into contracts with individuals  
14 in California, including within the County of Los Angeles. Each of the Defendants,  
15 therefore, has purposefully availed itself of the privilege of doing business in  
16 California, and material elements of Defendants’ wrongdoing occurred in this  
17 State.

18  
19 **THE PARTIES**

20 4. Plaintiff Perfect 10 is a California corporation with its principal place  
21 of business in Beverly Hills, California. Plaintiff publishes the popular magazine  
22 PERFECT 10 and owns and operates the internet website located at perfect10.com,  
23 which domain name Perfect 10 owns.

24 5. Defendant Google, Inc. (“Google”) is a California corporation which  
25 owns and operates the internet website located at google.com.

26 6. Does 1 through 100, inclusive, are sued herein under fictitious names  
27 because their true names and capacities are unknown to Perfect 10. When Perfect  
28 10 ascertains the Doe defendants’ true names and capacities, it will seek leave to

1 amend this complaint to insert such true names and capacities. Perfect 10 is  
2 informed and believes, and on that basis avers, that each Doe defendant acted with  
3 defendant Google and is responsible for the harm and damages to Perfect 10 herein  
4 averred. Defendant Google and the Doe defendants are referred to collectively as  
5 “Defendants.”

6 7. Perfect 10 is informed and believes, and on that basis avers, that at all  
7 times material herein, each of the Defendants was the agent and/or employee of the  
8 other Defendants, and, in doing the things herein averred, was acting within the  
9 course and scope of such agency and employment.

10  
11

**THE BUSINESS OF PERFECT 10**

12 8. The business of Perfect 10 consists of the design, creation, production,  
13 marketing, promotion, and sale of copyrighted adult entertainment products,  
14 including photographs, magazines, video productions, and other media.

15 9. Perfect 10 is the publisher of the well-known magazine PERFECT 10.

16 10. Perfect 10 creates and sells calendars and other merchandise featuring  
17 images from PERFECT 10 magazine and other quality images.

18 11. Perfect 10 owns and operates the internet website perfect10.com. The  
19 Perfect 10 website receives approximately 100,000 unique visitors per month.  
20 Consumers are provided access to content owned by Perfect 10 and made available  
21 on the perfect10.com website through an individual password and in return for the  
22 payment of a membership fee of \$25.50 per month.

23 12. Perfect 10’s revenues are derived largely from membership fees to its  
24 website, sales of and subscriptions to its magazine and sales of its merchandise.

25 13. The Perfect 10 Copyrighted Works: PERFECT 10 magazine and  
26 “perfect10.com” contain numerous valuable and unique copyrighted photographs,  
27 as well as video productions and other proprietary materials. Perfect 10 owns the  
28 copyrights in and to these works (the “Perfect 10 Copyrighted Works”). Perfect 10

1 has invested, and continues to invest, substantial sums of money, time, effort, and  
2 creative talent, to make and produce the Perfect 10 Copyrighted Works. In  
3 addition, in order to produce and sell the Perfect 10 Copyrighted Works, Perfect 10  
4 is required to make numerous payments, including but not limited to model fees,  
5 photographer fees, location costs, styling costs, make up costs, printing costs, film  
6 and processing costs, travel costs, as well as distribution, public relations, legal,  
7 and advertising and promotion costs.

8       14. The Perfect 10 Marks: Perfect 10 also is the owner of the valuable  
9 and well-known Perfect 10 family of trademarks, including but not limited to  
10 PERFECT 10 (the “Perfect 10 Marks”). These marks are used in commerce by  
11 Perfect 10 on and in connection with the sale of its products and services, including  
12 PERFECT 10 magazine and [perfect10.com](http://perfect10.com). Perfect 10 has spent millions of  
13 dollars advertising and promoting the Perfect 10 Marks and Perfect 10 products  
14 and services bearing these marks. Perfect 10 has built and owns the valuable  
15 goodwill symbolized by the Perfect 10 Marks.

16       15. Goods and services bearing the Perfect 10 Marks have been featured  
17 and referred to on numerous television and radio shows (including the *Tonight*  
18 *Show*, *Howard Stern Show*, *The Sopranos*, *Dawson’s Creek*, *Battledome*, *Fox*  
19 *News*, *Hard Copy*, *Entertainment Tonight*, *Extra*, *The Dating Game*, *Temptation*  
20 *Island*, *Monday Night Football*, *Hannity & Colmes*, *The O’Reilly Factor*, *The*  
21 *View*, and *Jenny Jones*), in motion pictures (including *Spiderman*, *American Pie*,  
22 *Hollow Man*, and *The Way of the Gun*), and in newspapers and periodicals.

23       16. The Perfect 10 Rights of Publicity: Perfect 10 contracts with models  
24 in connection with its magazine and website. Perfect 10 secures assignments from  
25 some of those models of their rights of publicity, including but not limited to the  
26 exclusive rights in and to these models’ names and likenesses (the “Perfect 10  
27 Rights of Publicity”). The Perfect 10 Rights of Publicity are valuable because the  
28 identities, including the names and likenesses, of these models are well-known and

1 popular and attract purchasers of PERFECT 10 magazine and visitors and  
2 subscribers to perfect10.com.

3 17. The success of Perfect 10's business is almost entirely dependent on  
4 the Perfect 10 Copyrighted Works, the Perfect 10 Marks, and the Perfect 10 Rights  
5 of Publicity. Therefore, the ongoing and massive infringements of Perfect 10's  
6 rights in the Perfect 10 Copyrighted Works, the Perfect 10 Marks, and the Perfect  
7 10 Rights of Publicity, as herein described, is devastating to, and threatens the  
8 existence of, Perfect 10's business.

### 9 **THE BUSINESS OF DEFENDANTS**

10 18. Defendants operate the internet website google.com. Consumers  
11 primarily visit this website to locate text, images, and other material, including  
12 adult images. Google earns its revenue primarily by attracting consumers, whose  
13 presence allows it to attract and charge fees to advertisers. Google offers two  
14 distinct search functions. The standard search function is called "Web Search,"  
15 which allows the consumer to specify certain search terms. When the search terms  
16 are input into a box on Google's website, computer programs created by Google  
17 generate a list of links related to the search terms which appear on google.com  
18 along with a short description of the content in each of those websites. The content  
19 on these websites purportedly relates to the search terms.

20 19. More recently, Defendants also have offered a "Search Images"  
21 feature designed to provide consumers with images related to whatever search term  
22 a user inputs. Searches performed using the "Search Images" feature yield high-  
23 quality copies of images, including thousands of copies of the Perfect 10  
24 Copyrighted Works, which are reproduced by Defendants without authorization  
25 and reside on Defendants' own servers. Defendants also link consumers to  
26 websites containing such images, including websites with which Defendants have  
27 business relationships and from which Defendants earn revenue.

1           20.     Defendants charge a fee to others to offer their Web Search or Image  
2 Search but do not charge individual consumers to view images on their servers or  
3 obtained via their Web Search or Image Search. Rather, Defendants earn  
4 additional revenue by, among other things, selling hundreds of millions of dollars  
5 each year in advertising to websites which advertise so as to be seen by consumers  
6 who visit Defendants' websites. The greater the amount and quality of content that  
7 Defendants provide to consumers via Web Search or Image Search, the more  
8 consumers Defendants attract. As Defendants' customer base and traffic increases,  
9 Defendants leverage the value of this customer base and traffic to generate more  
10 advertising dollars. High quality adult images, such as the Perfect 10 Copyrighted  
11 Works, attract millions of visitors to Defendants' websites and, therefore, are  
12 among the most sought-after category of content offered and provided by  
13 Defendants.

14           21.     Much of the adult content offered by Defendants comes from websites  
15 (the "Stolen Content Websites") that infringe the Perfect 10 Copyrighted Works,  
16 the Perfect 10 Marks, and the Perfect 10 Rights of Publicity, as well as the rights of  
17 other owners of intellectual property, including by reproducing, distributing,  
18 adapting, and publicly displaying the Perfect 10 Copyrighted Works, by  
19 improperly using in commerce the Perfect 10 Marks, and by infringing the Perfect  
20 10 Rights of Publicity. Stolen Content Websites, which easily can be located en  
21 masse through Defendants' search functions, are filled with unauthorized versions  
22 of the Perfect 10 Copyrighted Works, and unlawfully use the Perfect 10 Marks and  
23 the Perfect 10 Rights of Publicity (i.e., the names and unauthorized images of  
24 Perfect 10 models). Since many of the Stolen Content Websites are free,  
25 consumers can view and reproduce infringing versions of the Perfect 10  
26 Copyrighted Works at no cost, completely obviating the need to join Perfect 10's  
27 subscription website or subscribe to or purchase PERFECT 10 magazine, the  
28 legitimate sources for these images.

1           22. The unlawful use of the Perfect 10 Copyrighted Works, the Perfect 10  
2 Marks, and the Perfect 10 Rights of Publicity by Stolen Content Websites enables  
3 these websites to attract large amounts of consumer traffic, often by misleading  
4 consumers into believing they are associated, affiliated with or authorized by  
5 Perfect 10. They then are able to convert this consumer traffic into revenue by  
6 charging for advertising or by recommending visitors to paysites which in turn pay  
7 for their referrals. Some Stolen Content Websites charge consumers a monthly  
8 membership fee similar to Perfect 10's website. In such cases, Stolen Content  
9 Websites' ability to charge consumers for thousands of Perfect 10 Copyrighted  
10 Works for which the Stolen Content Websites have no costs, and to advertise the  
11 availability of images of Perfect 10 models, including by using the Perfect 10  
12 Marks and the Perfect 10 Rights of Publicity, allows them to piggyback on Perfect  
13 10's advertising and promotion efforts and expenses and on Perfect 10's goodwill  
14 and reputation. The Stolen Content Websites are, in this way, provided with an  
15 unjustified competitive advantage over perfect10.com, which must pay for its  
16 legitimate content.

17           23. It would be virtually impossible for consumers to locate most Stolen  
18 Content Websites if they were not directed to them by Defendants. The vast  
19 preponderance of Stolen Content Websites have no brand associated with them nor  
20 have they created any goodwill, as has Perfect 10, that would draw consumers.  
21 Indeed, Stolen Content Websites usually are obscure, frequently operate from  
22 foreign countries such as Russia, Hungary, Poland, Indonesia, France, Turkey,  
23 Argentina, Spain, Korea, Mexico, and the Czech Republic (although they are  
24 accessible in the United States and target United States' consumers) and/or  
25 fraudulently appear to do so under the cover of false contact information. Further,  
26 Stolen Content Websites often disappear and reappear with the same or similar  
27 content under different website addresses ("URLs") and/or use many different  
28 URLs that all link to the same website.

1           24. For all of these reasons and additionally because many of the Stolen  
2 Content Websites are judgment proof, it is economically and practically impossible  
3 to sue them for infringement of Perfect 10's rights.

4           25. Defendants provide consumers with unauthorized access to the Perfect  
5 10 Copyrighted Works from Stolen Content Websites in at least five distinct ways,  
6 all of which generate visitors to Defendants' website and advertising revenue to  
7 Defendants.

8           (a) *First*, Defendants search the internet for images, including  
9 infringing copies of the Perfect 10 Copyrighted Works, and without authorization  
10 copy them to Defendants' servers. Defendants then provide these infringing copies  
11 to consumers through Defendants' "Search Images" function. Defendants display  
12 such infringing copies on their websites in two different sizes – the second one  
13 accessible by "clicking" on the first. In order to provide Defendants' services, it is  
14 not necessary for Defendants to make any such infringing copies, to maintain them  
15 on their servers, or to provide consumers with any infringing copies. Nevertheless,  
16 Defendants commit all these infringing acts. The infringing copies made by  
17 Defendants are large and detailed enough to be identifiable and fulfill consumer  
18 demand for the images they embody. Consumers can view, print, copy, download,  
19 distribute to others, e-mail, and otherwise manipulate the infringing copies made  
20 by Defendants. Examples of versions of such infringing copies, which are  
21 generated by searching for Perfect 10 model names on Defendants' website  
22 google.com, are attached hereto as Exhibit 1, and by this reference incorporated  
23 herein. All of the images on the first page of Exhibit 1 and some of the images on  
24 the second page of Exhibit 1 are Perfect 10 Copyrighted Works.

25           (b) *Second*, Defendants display, also through their "Search Images"  
26 function (in what is known as a "window"), additional unauthorized copies of the  
27 Perfect 10 Copyrighted Works, in essentially the full size as the original Perfect 10  
28 Copyrighted Works. These infringing displays are in conjunction with and on the

1 same screen as infringing copies contained on Defendants' servers. Although  
2 Defendants claim that the full-size copies that Defendants display in this manner  
3 do not reside on Defendants' servers, as a practical matter these displayed copies  
4 appear to the consumer to be located on Defendants' websites; consumers can  
5 view, copy, download, and otherwise manipulate them without taking any action  
6 (such as "clicking" on a link) to leave Defendants' websites; and Defendants  
7 provide and control the environment and experience of the consumer during this  
8 process. Examples of Defendants' unauthorized display of full-size Perfect 10  
9 Copyrighted Works are shown in the first three pages of Exhibit 2. In the last five  
10 pages of Exhibit 2, clicking on the displayed images leads to unauthorized copies  
11 of over one hundred Perfect 10 Copyrighted Works, all of which can be enlarged to  
12 full size for free. Defendants' acts and conduct obviate the need to pay for a  
13 membership to perfect10.com or subscribe to or purchase Perfect 10 magazine and  
14 effectively make such images worthless to Perfect 10.

15 (c) *Third*, through Defendants' "Web Search" function, Defendants  
16 create multiple links that take consumers directly to infringing copies of Perfect 10  
17 Copyrighted Works on Stolen Content Websites. For a given Stolen Content  
18 Website, Defendants may create thousands of links, each of which, when clicked  
19 on, returns a different page within the Stolen Content Website that may contain  
20 unauthorized Perfect 10 Copyrighted Works or infringements of the Perfect 10  
21 Marks or the Perfect 10 Rights of Publicity. Each such link created by Defendants  
22 permits a consumer to move from one infringing page to another and to access the  
23 entirety of the infringing content on the Stolen Content Website. Perfect 10 is  
24 informed and believes, and on that basis avers, that Defendants arrange their search  
25 results so that when a search is performed on the name of a Perfect 10 model, the  
26 links which appear at the top of the search results frequently lead to free, full sized  
27 images of that model, while websites lower in the search results require payment to  
28 view such images or merely use the model name but do not provide such images.

1 (d) *Fourth*, in other instances, particularly when the search term  
2 perfect10.com is used by the consumer, Defendants link consumers to Stolen  
3 Content Websites which contain otherwise unavailable unique passwords  
4 permitting access to perfect10.com. Defendants also publish the perfect10.com  
5 passwords on Defendants' own servers in their search results generated by the  
6 consumer's use of such search terms. Defendants thereby facilitate access to  
7 perfect10.com by their consumers, without authority and without those consumers  
8 purchasing a membership, permitting users to gain free access to virtually the  
9 entirety of the Perfect 10 Copyrighted Works. An example of Defendants'  
10 publication on google.com of username/password combinations allowing free  
11 access to perfect10.com and other websites is shown in Exhibit 3, attached hereto  
12 and by this reference incorporated herein. The following username/password  
13 combinations on Exhibit 3 provide access to perfect10.com: username: Buckskin,  
14 password: 1judee; username: captainw, password: limpet; and username:  
15 bosshoss1, password: 8791.

16 (e) *Fifth*, as a means of generating additional advertising and other  
17 revenues, Defendants purport to market and sell the right to use the Perfect 10  
18 Marks and the Perfect 10 Rights of Publicity to advertisers and entities, including  
19 Stolen Content Websites, which Defendants know have no connection to Perfect  
20 10. As a result, when consumers use the Perfect 10 Marks, or the names of Perfect  
21 10 models, to find materials on or through Defendants' websites that are created  
22 by, authorized by, or affiliated with Perfect 10, Defendants instead misdirect and  
23 link consumers to Stolen Content Websites and other locations on the internet that  
24 infringe Perfect 10's rights, and/or that compete with Perfect 10. A significant  
25 number of consumers are thereby likely to be deceived into believing that the  
26 Stolen Content Websites are sponsored by, authorized by, or affiliated with Perfect  
27 10. Defendants thus financially benefit by diverting consumers who seek to

1 purchase or otherwise use or consider Perfect 10's products and services to  
2 unaffiliated, unauthorized, and infringing Stolen Content Websites.

3 26. All of the Perfect 10 Copyrighted Works to which Defendants provide  
4 consumers with access, both on Defendants' own servers and by linking to Stolen  
5 Content Websites, are stolen. Defendants engage in and permit the massive and  
6 ongoing violations of Perfect 10's rights even though Defendants are aware that  
7 Perfect 10 never has authorized or consented to the use by Defendants or the  
8 Stolen Content Websites of the Perfect 10 Copyrighted Works, the Perfect 10  
9 Marks, the Perfect 10 Rights of Publicity, or perfect10.com passwords.

10 Defendants are aware of the lack of Perfect 10's authorization and consent for the  
11 following reasons, among others:

12 (a) *First*, Defendants have been provided actual notice, in the form  
13 of at least twenty-seven Digital Millennium Copyright Act ("DMCA")-compliant  
14 notices, of infringements of Perfect 10's rights on both Defendants' servers and on  
15 Stolen Content Websites found through Defendants' websites. These notices  
16 informed Defendants of infringements of the Perfect 10 Copyrighted Works, the  
17 Perfect 10 Marks, and the Perfect 10 Rights of Publicity on at least 2,700 URLs in  
18 Defendants' system, including approximately 1000 URLs for infringing images on  
19 Defendants' own servers. Defendants have done little or nothing in response to  
20 these notices, and did not act at all for more than three years until Perfect 10  
21 recently sent them a draft complaint in the hopes of resolving this matter short of  
22 litigation. Perfect 10 is informed and believes, and on that basis avers, that at  
23 present, there are at least 800,000 links in Defendants' system, leading to  
24 thousands of distinct copies of unauthorized Perfect 10 Copyrighted Works on  
25 Stolen Content Websites to which Defendants link. Defendants have received  
26 actual notice that Stolen Content Websites to which Defendants continue to link  
27 contain Perfect 10 Copyrighted Works. This massive infringement does not

1 include the vast number of images available without authorization via stolen  
2 perfect10.com passwords, as described above.

3 (b) *Second*, the Perfect 10 Copyrighted Works on Defendants'  
4 servers and on the Stolen Content Websites often contain visible Perfect 10 Marks  
5 or a visible copyright notice. Defendants routinely describe such images on their  
6 servers using the term "P10," which is synonymous with Perfect 10. Similarly,  
7 unauthorized, high quality adult images owned by other content providers (e.g.,  
8 Playboy) on these same Stolen Content Websites also typically contain visible  
9 copyright notices or trademarks.

10 (c) *Third*, many of the Stolen Content Websites contain  
11 "disclaimers" that explicitly state that they do not own their content, with language  
12 to the effect that they have copied their images from various websites and that the  
13 copyrights for such images remain with their creators. Similarly, when a consumer  
14 uses Defendants' "Search Images" feature to locate a photograph (including  
15 Perfect 10 Copyrighted Works), Defendants' website informs the consumer in  
16 conjunction with the photograph: "This image may be subject to copyright." An  
17 example of such a disclaimer is shown in Exhibit 4, attached hereto and by this  
18 reference incorporated herein, along with an example of a Perfect 10 Copyrighted  
19 Work depicting Perfect 10 model Nataskia Maren, whose name and image are  
20 among the Perfect 10 Rights of Publicity.

21 27. Defendants' involvement with Stolen Content Websites is not limited  
22 to all of the conduct described above. As Defendants' business has matured, they  
23 increasingly have sought additional sources of revenue and, accordingly,  
24 increasingly have become involved with, knowledgeable of, in control of, and  
25 financially tied to, the advertising on their system and to infringing conduct and  
26 material and the Stolen Content Websites that provide and rely on such infringing  
27 conduct and material. Because the existence of high quality adult images such as  
28 the Perfect 10 Copyrighted Works substantially enhances their advertising

1 revenues, not only have Defendants copied infringing images from Stolen Content  
2 Websites onto their servers and linked to millions of other such infringing images,  
3 Defendants also have established advertising programs by which Stolen Content  
4 Websites and other websites can, for a fee, have their advertisements appear in  
5 response to searches performed on various key words, including those constituting  
6 the Perfect 10 Marks and protected by the Perfect 10 Rights of Publicity.

7       28. One such program is called “Adwords,” in which Stolen Content  
8 Websites and other websites pay Defendants a fee when a consumer using  
9 Defendants’ websites clicks on an advertisement for the Stolen Content Website or  
10 other website. To become part of this program, the Stolen Content Website or  
11 other website submits to Defendants a description of its website, the website URL,  
12 and keywords related to the website. When a consumer performs a search on these  
13 keywords, the website will appear at or near the top of the generated list of search  
14 results provided by Defendants.

15       29. In order to optimize the likelihood that an Adwords website will be  
16 found and clicked on, thereby generating a click-through fee for Defendants,  
17 Defendants consider the submitted keywords and recommend to the Stolen Content  
18 Website or other website additional keywords to improve results. For example,  
19 when the keyword phrase “all natural models” (Perfect 10’s niche in the adult  
20 marketplace) is submitted, Defendants have recommended the additional keywords  
21 “Perfect 10,” “P10,” and the names of well-known Perfect 10 models such as  
22 Ashley Degenford, Jennifer Leone and Jessica Asher, whose names and likenesses  
23 are among the Perfect 10 Rights of Publicity. Additionally, when the keyword  
24 phrase “hacked perfect10.com passwords” is submitted, Defendants have  
25 recommended as keywords various names of password hacking websites that have  
26 distributed unauthorized perfect10.com passwords.

27       30. When a search on “Perfect 10” is performed, Defendants have caused  
28 several sponsored advertisements to appear – including one for an “online

1 magazine” – that have no affiliation or relationship with Perfect 10. Perfect 10 has  
2 notified Defendants that these advertisements misuse the Perfect 10 Marks.  
3 Similarly, other sponsored advertisements appear when searches are performed  
4 using the Perfect 10 Marks and the names of Perfect 10 models that are among the  
5 Perfect 10 Rights of Publicity. Such conduct is calculated to and does mislead,  
6 deceive, or confuse consumers into believing that Perfect 10 endorses, authorizes,  
7 or is associated, affiliated, or connected with the Stolen Content Websites and  
8 other unaffiliated websites. Defendants have continued profiting from click-  
9 through fees resulting from searches on the Perfect 10 Marks and that infringe the  
10 Perfect 10 Rights of Publicity despite repeated notice from Perfect 10 and demands  
11 that Defendants cease such unlawful conduct.

12         31. A second advertising program implemented by Defendants is referred  
13 to as “AdSense.” In the AdSense program, Defendants share their advertising  
14 click-through fees with Stolen Content Websites and other websites that generally  
15 are part of the Adwords program. These websites include Defendants’ “search  
16 box” on their websites and place on their own websites advertisements for other  
17 Adwords websites. Defendants receive revenues when consumers click on such  
18 advertisements. Defendants have an incentive to send traffic to websites  
19 participating in the AdSense program because by doing so Defendants increase the  
20 likelihood that consumers will click on advertisements for Adwords websites,  
21 generating additional click-through fees for Defendants. Many Stolen Content  
22 Websites are part of Defendants’ AdSense program, despite the fact that  
23 Defendants purport to require such sites to agree not to breach any duty toward, or  
24 rights of, any person or entity including rights of intellectual property, publicity,  
25 and privacy, and to require such sites to agree to be subject to the review and  
26 approval of Defendants in Defendants’ discretion at any time.

27         32. Although Defendants claim that search results are presented in an  
28 order based on “relevance” to search terms, Perfect 10 is informed and believes,

1 and on that basis avers, that websites that are part of the Adsense program virtually  
2 always receive from Defendants a more prominent listing position than they  
3 otherwise would receive.

4 33. Moreover, Perfect 10 is informed and believes, and on that basis  
5 avers, that Defendants encourage advertisers, including Stolen Content Websites,  
6 to use trademarked words, including the Perfect 10 Marks, in order to cause  
7 consumers searching for goods or services associated with those marks to be  
8 misdirected to Defendants' advertisers. Since Defendants get paid on a pay-per-  
9 click-through basis, they have a strong incentive to ensure that sites that are part of  
10 the Adwords or Adsense programs are in prime positions in Defendants' search  
11 results, and that content, including Perfect 10 Copyrighted Works, contained on  
12 such websites reside in prominent positions on their servers.

13 34. Perfect 10 is informed and believes, and on that basis avers, that  
14 Defendants have received millions of dollars in revenue from their Adwords and  
15 Adsense agreements with Stolen Content Websites and other websites, and from  
16 advertising revenues generated as a result of the massive amounts of high quality  
17 infringing copies of Perfect 10 Copyrighted Works both on Defendants' own  
18 servers and on linked Stolen Content Websites.

19  
20 **FIRST CLAIM FOR RELIEF**

21 (Copyright Infringement –  
22 17 U.S.C. § 101 *et seq.*)

23 35. Perfect 10 re-avers and incorporates herein by reference each and  
24 every averment of paragraphs 1 through 34 above as though fully set forth herein.

25 36. Perfect 10 is the owner of all right, title, and interest to each of the  
26 Perfect 10 Copyrighted Works. Perfect 10 has registered the copyrights for its  
27 magazines, calendars, and website, each of which contains Perfect 10 Copyrighted

1 Works. Perfect 10 has been issued the following United States copyright  
2 certificates:

3 <b>Copyright Registration No.</b>	<b>Title of Work</b>
4 TX 4-556-514	Perfect 10 Magazine (Vol. 1; Number 1)
5 TX 4-556-511	Perfect 10 Magazine (Vol. 1; Number 2)
6 TX 4-556-482	Perfect 10 Magazine (Vol. 1; Number 3)
7 TX 4-556-510	Perfect 10 Magazine (Vol. 1; Number 4)
8 TX 4-556-475	Perfect 10 Magazine (Vol. 1; Number 5)
9 TX 4-556-541	Perfect 10 Magazine (Vol. 1; Number 6)
10 TX 4-812-575	Perfect 10 Magazine (Vol. 2; Number 1)
11 TX 4-813-355	Perfect 10 Magazine (Vol. 2; Number 2)
12 TX 4-812-793	Perfect 10 Magazine (Vol. 2; Number 3)
13 TX 4-813-026	Perfect 10 Magazine (Vol. 2; Number 4)
14 TX 4-812-972	Perfect 10 Magazine (Vol. 2; Number 5)
15 TX 4-813-344	Perfect 10 Magazine (Vol. 2; Number 6)
16 TX 4-813-338	Perfect 10 Magazine (Vol. 3; Number 1)
17 TX 4-813-390	Perfect 10 Magazine (Vol. 3; Number 2)
18 TX 5-172-229	Perfect 10 Magazine (Vol. 3; Number 3)
19 TX 5-201-630	Perfect 10 Magazine (Vol. 3; Number 4)
20 TX 5-217-598	Perfect 10 Magazine (Vol. 3; Number 5)
21 TX 5-328-427	Perfect 10 Magazine (Vol. 3; Number 6)
22 TX 5-328-528	Perfect 10 Magazine (Vol. 4; Number 1)
23 TX 5-328-636	Perfect 10 Magazine (Vol. 4; Number 2)
24 TX 5-488-941	Perfect 10 Magazine (Vol. 4; Number 3)
25 TX 5-488-942	Perfect 10 Magazine (Vol. 4; Number 4)
26 TX 5-451-806	Perfect 10 Magazine (Vol. 4; Number 5)
27 TX 5-452-020	Perfect 10 Magazine (Vol. 4; Number 6)

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<b>Copyright Registration No.</b>	<b>Title of Work</b>
TX 5-452-132	Perfect 10 Magazine (Vol. 5; Number 1)
TX 5-452-254	Perfect 10 Magazine (Vol. 5; Number 2)
TX 5-452-489	Perfect 10 Magazine (Vol. 5; Number 3)
TX 5-802-012	Perfect 10 Magazine (Vol. 5; Number 4)
TX 5-802-272	Perfect 10 Magazine (Vol. 5; Number 5)
TX 5-802-273	Perfect 10 Magazine (Vol. 5; Number 6)
PA 776-173	Perfect 10 Model of the Year Video (G-Rated)
PA 955-019	Perfect 10 Model of the Year Video (R-Rated)
PA 1-205-443	Perfect 10 Behind the Scenes, Volume 1
PA 1-198-697	Perfect 10 Behind the Scenes, Volume 2
VA 987-612	Perfect 10 2000 Calendar
VA 1-026-167	Perfect 10 2001 Calendar
VA 996-673	Perfect 10 Website (Perfect10.com)
VA 1-085-670	Perfect 10 Website (Perfect10.com)
VA 1-177-241	Perfect 10 Website (Perfect10.com)
VA 1-230-966	Perfect 10 Website (Perfect10.com)
VA 1-201-270	Adele Stephens, Asia Carrera, and Nikki Nova Photos Published in 1996
VA 1-201-269	Jenna Jameson Photos Published in 1994
VA 1-201-268	Adele Stephens and Veronika Zemanova Photos Published in 1998
VA 1-202-770	Veronika Zemanova Poolside Photo Published in 2000
VA 1-202-771	Veronika Zemanova Poolside Photos Published in 1999
VA 1-208-275	Amy Weber Photos 1998 Volume 2
VA 1-208-295	Amy Weber Photos 1998
VA 1-208-244	Amy Weber Photos 1999
VA 1-221-373	Amy Weber Photos 1997

1	<b>Copyright Registration No.</b>	<b>Title of Work</b>
2	VA 1-230-967	Amy Weber White Shorts
3	VA 1-254-823	Amy Weber Photos 1998 Volume 3
4	VAU 323-589	September 2000 JSH Photo Registration
5	VAU 353-439	February 1999 JSH Photo Registration
6	VAU 353-448	February 1999 J. Stephen Hicks Photo
7		Registration
8	VAU 353-469	March 1999 JSH Photo Registration
9	VAU 353-504	August 1999 JSH Photo Registration
10	VAU 353-511	February 3, 2000 JSH Photo Registration
11	VAU 514-094	March 2001 JSH Photo Registration
12	VAU 514-122	September 2001 JSH Photo Registration
13	VAU 537-932	July 2002 JSH Photo Registration
14	VAU 537-946	June 2002 JSH Photo Registration
15	VAU 537-983	December 2002 JSH photo registration
16	Pending	Perfect 10 Magazine (Vol. 6; Number 1)
17	Pending	Perfect 10 Magazine (Vol. 6; Number 2)
18	Pending	Perfect 10 Magazine (Vol. 6; Number 3)
19	Pending	Amy Weber Photos 1998 Volume 4
20	Pending	Amy Weber Photos 1998 Volume 5
21	Pending	Amy Weber Photos 1999 Volume 2
22	VA1-231-092	Amber Smith Photos, Volume 1
23	VA1-231-093	Amber Smith Photos, Volume 2
24	Pending	Perfect 10 Website (Updated 7/28/04)
25	Pending	Boxing Beauties Website
26	Pending	Model Boxing Website
27		

1           37. Each of the Perfect 10 Copyrighted Works consists of material  
2 original with Perfect 10 and each is copyrightable subject matter.

3           38. Defendants have copied, reproduced, distributed, adapted, and/or  
4 publicly displayed the Perfect 10 Copyrighted Works without the consent or  
5 authority of Perfect 10, thereby directly infringing Perfect 10's copyrights.

6           39. Defendants' conduct constitutes infringement of Perfect 10's  
7 copyrights and exclusive rights under copyright in the Perfect 10 Copyrighted  
8 Works in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106  
9 and 501.

10           40. The infringement of Perfect 10's rights in and to each of the Perfect  
11 10 Copyrighted Works constitutes a separate and distinct act of infringement.

12           41. The acts of infringement by Defendants have been willful, intentional,  
13 and purposeful, in reckless disregard of and with indifference to the rights of  
14 Perfect 10.

15           42. As a direct and proximate result of the infringements by Defendants  
16 of Perfect 10's copyrights and exclusive rights under copyright in the Perfect 10  
17 Copyrighted Works, Perfect 10 is entitled to its actual damages and Defendants'  
18 profits pursuant to 17 U.S.C. § 504(b).

19           43. Alternatively, Perfect 10 is entitled to the maximum statutory  
20 damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect  
21 to each work infringed, or such other amounts as may be proper under 17 U.S.C. §  
22 504(c).

23           44. Defendants' conduct is causing and, unless enjoined and restrained by  
24 this Court, will continue to cause, Perfect 10 great and irreparable injury that  
25 cannot fully be compensated in money. Perfect 10 has no adequate remedy at law.  
26 Pursuant to 17 U.S.C. § 502, Perfect 10 is entitled to injunctive relief prohibiting  
27 further infringements of Perfect 10's copyrights.





1 Defendants' websites and advertising dollars resulting from the "draw" of the  
2 Perfect 10 Copyrighted Works.

3 57. Defendants' conduct constitutes vicarious infringement of Perfect  
4 10's copyrights and exclusive rights under copyright in the Perfect 10 Copyrighted  
5 Works in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106  
6 and 501.

7 58. The infringement of Perfect 10's rights in and to each of the Perfect  
8 10 Copyrighted Works constitutes a separate and distinct act of infringement.

9 59. The acts of infringement by Defendants have been willful, intentional,  
10 and purposeful, in reckless disregard of and with indifference to the rights of  
11 Perfect 10.

12 60. As a direct and proximate result of the infringements by Defendants  
13 of Perfect 10's copyrights and exclusive rights under copyright in the Perfect 10  
14 Copyrighted Works, Perfect 10 is entitled to its actual damages and Defendants'  
15 profits pursuant to 17 U.S.C. § 504(b).

16 61. Alternatively, Perfect 10 is entitled to the maximum statutory  
17 damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect  
18 to each work infringed, or such other amounts as may be proper under 17 U.S.C. §  
19 504(c).

20 62. Defendants' conduct is causing and, unless enjoined and restrained by  
21 this Court, will continue to cause, Perfect 10 great and irreparable injury that  
22 cannot fully be compensated in money. Perfect 10 has no adequate remedy at law.  
23 Pursuant to 17 U.S.C. § 502, Perfect 10 is entitled to injunctive relief prohibiting  
24 further infringements of Perfect 10's copyrights.

25 63. Perfect 10 further is entitled to its attorneys' fees and full costs  
26 pursuant to 17 U.S.C. § 505.

1 **FOURTH CLAIM FOR RELIEF**

2 (Circumvention of Copyright Protection Systems –

3 17 U.S.C. § 1201(a))

4 64. Perfect 10 re-avers and incorporates herein by reference each and  
5 every averment contained in paragraphs 1 through 34 and 36 and 37 above, as  
6 though fully set forth herein.

7 65. By publishing perfect10.com passwords on Defendants' own servers  
8 and/or linking consumers to Stolen Content Websites which contain otherwise  
9 unavailable passwords to provide access to perfect10.com, Defendants have  
10 circumvented technological measures that effectively control access to works  
11 protected by the Copyright Act, and that protect Perfect 10's rights in the Perfect  
12 10 Copyrighted Works, and/or have aided and abetted such circumvention.

13 66. The acts of Defendants have been willful, intentional, and purposeful,  
14 in reckless disregard of and with indifference to the rights of Perfect 10.

15 67. As a direct and proximate result of Defendants' violations of 17  
16 U.S.C. § 1201(a), Perfect 10 is entitled to its actual damages and Defendants'  
17 profits pursuant to 17 U.S.C. § 504(b).

18 68. Alternatively, Perfect 10 is entitled to the maximum statutory  
19 damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect  
20 to each work infringed, or such other amounts as may be proper under 17 U.S.C. §  
21 504(c).

22 69. Defendants' conduct is causing and, unless enjoined and restrained by  
23 this Court, will continue to cause, Perfect 10 great and irreparable injury that  
24 cannot fully be compensated in money. Perfect 10 has no adequate remedy at law.  
25 Pursuant to 17 U.S.C. § 502, Perfect 10 is entitled to injunctive relief prohibiting  
26 further infringements of Perfect 10's copyrights.

27 70. Perfect 10 further is entitled to its attorneys' fees and full costs  
28 pursuant to 17 U.S.C. § 505.

1 **FIFTH CLAIM FOR RELIEF**

2 (Direct Trademark Infringement –

3 15 U.S.C. §§ 1114, 1125 *et seq.*)

4 71. Perfect 10 re-avers and incorporates herein by reference each and  
5 every averment of paragraphs 1 through 34 above as though fully set forth herein.

6 72. Perfect 10 is the owner of the Perfect 10 Marks, including the  
7 registered trademark/service marks PERFECT 10 and PERFECT10.COM. The  
8 United States trademark/service mark registrations for PERFECT 10 and  
9 PERFECT10.COM include Registration Nos. 2,202,643, 2,235,145, 2,573,998,  
10 and 2,709,583 for, among other goods and services, entertainment services in the  
11 nature of adult entertainment and beauty contests provided via a global computer  
12 network; entertainment services in the nature of beauty contests; and magazines  
13 featuring adult entertainment, beauty contests, pictures of female models,  
14 interviews, fiction, and articles on human relations, sports, entertainment,  
15 lifestyles, fitness, and calendars and unmounted photographs.

16 73. The Perfect 10 Marks have been continuously used in commerce since  
17 1991 by Perfect 10 and its predecessors, and are widely known throughout the  
18 United States.

19 74. Perfect 10 has spent millions of dollars advertising and promoting the  
20 Perfect 10 Marks and products and services bearing the Perfect 10 Marks, and has  
21 marketed and sold millions of dollars of products and services under the Perfect 10  
22 Marks.

23 75. As a direct result of the aforementioned use, promotion, and  
24 advertisement of the Perfect 10 Marks, Perfect 10 has built up and now owns  
25 valuable goodwill symbolized by the Perfect 10 Marks.

26 76. As a direct result of the care and skill exercised by Perfect 10 over the  
27 nature and quality of goods and services sold under the Perfect 10 Marks and the  
28 extensive promotion, advertising, sale, and public acceptance thereof, the Perfect

1 10 Marks have become known as a symbol of the goodwill that Perfect 10 has  
2 created throughout the United States and elsewhere by selling products and  
3 services of high quality and by fairly and honorably dealing with the trade and  
4 public in the sale of these products and services.

5 77. Defendants' conduct, as averred herein, including using and  
6 reproducing the Perfect 10 Marks in commerce in connection with the sale,  
7 offering for sale, and advertising of goods and services on Defendants' websites  
8 and by Stolen Content Websites, for the purpose or with the effect of directing  
9 consumers who are searching for authorized Perfect 10 products and services to the  
10 Stolen Content Websites, constitutes infringement of the Perfect 10 Marks in  
11 violation of Sections 32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114 and 1125.

12 78. The conduct of Defendants has been and is willful and deliberate.

13 79. Perfect 10 is entitled to recover all damages sustained as a result of  
14 Defendants' unlawful conduct, including (a) Defendants' profits, (b) Perfect 10's  
15 damages, (c) treble those amounts, (d) costs of suit, and (e) reasonable attorneys'  
16 fees.

17 80. Defendants' conduct is causing and, unless enjoined and restrained by  
18 this Court, will continue to cause, Perfect 10 great and irreparable injury that  
19 cannot fully be compensated in money. Perfect 10 has no adequate remedy at law.  
20 Perfect 10 is entitled to injunctive relief prohibiting further infringements of the  
21 Perfect 10 Marks.

22  
23 **SIXTH CLAIM FOR RELIEF**

24 (Contributory Trademark Infringement –

25 15 U.S.C. §§ 1114, 1125 *et seq.*)

26 81. Perfect 10 re-avers and incorporates herein by reference each and  
27 every averment of paragraphs 1 through 34 and 72 through 76 above as though  
28 fully set forth herein.



1 Stolen Content Websites that appear in Defendants' search results and/or the  
2 manner or order in which those search results are displayed, and in connection  
3 therewith have an apparent or actual partnership designed to direct consumers  
4 searching for goods and services associated with the Perfect 10 Marks to the Stolen  
5 Content Websites, which infringe the Perfect 10 Marks.

6 88. Defendants' conduct constitutes willful and deliberate vicarious  
7 infringement of the Perfect 10 Marks in violation of Sections 32 and 43 of the  
8 Lanham Act, 15 U.S.C. §§ 1114 and 1125.

9 89. Perfect 10 is entitled to recover all damages sustained as a result of  
10 Defendants' unlawful conduct, including (a) Defendants' profits, (b) Perfect 10's  
11 damages, (c) treble those amounts, (d) costs of suit, and (e) reasonable attorneys'  
12 fees.

13 90. Defendants' conduct is causing and, unless enjoined and restrained by  
14 this Court, will continue to cause, Perfect 10 great and irreparable injury that  
15 cannot fully be compensated in money. Perfect 10 has no adequate remedy at law.  
16 Perfect 10 is entitled to injunctive relief prohibiting further infringements of the  
17 Perfect 10 Marks.

18  
19 **EIGHTH CLAIM FOR RELIEF**

20 (Unfair Competition –  
21 15 U.S.C. § 1125 *et seq.*)

22 91. Perfect 10 re-avers and incorporates herein by reference each and  
23 every averment of paragraphs 1 through 34 and 72 through 76 above as though  
24 fully set forth herein.

25 92. Defendants' actions as averred herein constitute a false designation of  
26 origin and are likely to cause confusion or mistake, or deceive as to affiliation,  
27 connection, or association of the Stolen Content Websites with Perfect 10, and as

1 to origin, sponsorship, and/or approval of the Stolen Content Websites' services  
2 and products by Perfect 10.

3 93. Defendants' conduct constitutes unfair competition in violation of 15  
4 U.S.C. § 1125(a).

5 94. Perfect 10 is entitled to recover all damages sustained as a result of  
6 Defendants' unlawful conduct, including (a) Defendants' profits, (b) Perfect 10's  
7 damages, (c) treble those amounts, (d) costs of suit, and (e) reasonable attorneys'  
8 fees.

9 95. Defendants' conduct is causing and, unless enjoined and restrained by  
10 this Court, will continue to cause, Perfect 10 great and irreparable injury that  
11 cannot fully be compensated or measured in money. Perfect 10 has no adequate  
12 remedy at law. Perfect 10 is entitled to injunctive relief prohibiting further  
13 infringements of the Perfect 10 Marks.

14  
15 **NINTH CLAIM FOR RELIEF**

16 (Trademark Dilution –

17 15 U.S.C. §§ 1114, 1125 *et seq.*)

18 96. Perfect 10 re-avers and incorporates herein by reference each and  
19 every averment of paragraphs 1 through 34 and 72 through 76 above as though  
20 fully set forth herein.

21 97. The Perfect 10 Marks have become and at all relevant times have been  
22 "famous" within the meaning of 15 U.S.C. § 1125(c).

23 98. The Stolen Content Websites typically are of poor quality, provide  
24 poor service and a substandard experience to customers, and intermingle Perfect  
25 10's high-quality images with unauthorized images or images of poor quality or of  
26 an offensive or illegal nature. The acts of Defendants averred herein have lessened  
27 the capacity of the Perfect 10 Marks to identify and distinguish Perfect 10's  
28 services and products from those of the Stolen Content Websites, have tarnished

1 the valuable image and reputation associated with the Perfect 10 Marks, and have  
2 created an undesirable, unwholesome, or unsavory mental association with Perfect  
3 10 and the Perfect 10 Marks, damaging Perfect 10's goodwill and disparaging  
4 Perfect 10's rights in the Perfect 10 Marks. Defendants' acts and conduct are in  
5 violation of 15 U.S.C. § 1125(c).

6 99. Defendants have willfully intended to trade on Perfect 10's reputation  
7 and/or to cause dilution of the Perfect 10 Marks. Accordingly, Perfect 10 is  
8 entitled to recover all damages sustained as a result of Defendants' unlawful  
9 conduct, including (a) Defendants' profits, (b) Perfect 10's damages, (c) treble  
10 those amounts, (d) costs of suit, and (e) reasonable attorneys' fees.

11 100. Defendants' conduct is causing and, unless enjoined and restrained by  
12 this Court, will continue to cause, Perfect 10 great and irreparable injury that  
13 cannot fully be compensated in money. Perfect 10 has no adequate remedy at law.  
14 Perfect 10 is entitled to injunctive relief prohibiting further dilution and  
15 disparagement of the Perfect 10 Marks.

16  
17 **TENTH CLAIM FOR RELIEF**

18 (Wrongful Use of a Registered Mark –

19 Cal. Bus. & Prof. Code § 14335)

20 101. Perfect 10 re-avers and incorporates herein by reference each and  
21 every averment of paragraphs 1 through 34, 72 through 76, 82, 83, 87, and 88  
22 above as though fully set forth herein.

23 102. Perfect 10 has also registered its mark PERFECT 10 with the State of  
24 California, registration number 047965.

25 103. Defendants' actions in using and reproducing the Perfect 10 Marks in  
26 connection with the sale, offering for sale, and advertising of goods and services is  
27 likely to cause mistake and to deceive the public as to the source or origin of such  
28 websites' goods and services. Defendants' actions have at all times been, and

1 continue to be, without Perfect 10's authority or consent. Defendants' acts  
2 constitute unlawful infringement and wrongful use of a registered mark in violation  
3 of California Business and Professions Code §§ 14320, 14335, 14340, *et seq.*

4 104. Defendants' conduct is causing and, unless enjoined and restrained by  
5 this Court, will continue to cause, Perfect 10 great and irreparable injury that  
6 cannot fully be compensated in money. Perfect 10 has no adequate remedy at law.  
7 Perfect 10 also is entitled to injunctive relief prohibiting further infringements of  
8 the Perfect 10 Marks.

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### ELEVENTH CLAIM FOR RELIEF

11

(Trademark Dilution –

12

Cal. Bus. & Prof. Code § 14330)

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105. Perfect 10 re-avers and incorporates herein by reference each and  
every averment of paragraphs 1 through 34 and 97 and 102 above as though fully  
15 set forth herein.

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106. Defendants' acts and conduct, as averred herein, are in violation of  
California Business & Professions Code § 14330 in that they are likely to injure  
the business reputation of Perfect 10 or dilute the distinctive quality of the Perfect  
10 Marks registered with the State of California.

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107. Defendants' conduct is causing and, unless enjoined and restrained by  
this Court, will continue to cause, Perfect 10 great and irreparable injury that  
cannot fully be compensated in money. Perfect 10 has no adequate remedy at law.  
Perfect 10 is entitled to injunctive relief prohibiting further dilution and  
disparagement of the Perfect 10 Marks.

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1 **TWELFTH CLAIM FOR RELIEF**

2 (Violation of Rights of Publicity –

3 Cal. Civ. Code § 3344 and common-law right of publicity)

4 108. Perfect 10 re-avers and incorporates herein by reference each and  
5 every averment of paragraphs 1 through 34 above as though fully set forth herein.

6 109. Perfect 10 is the exclusive owner of the Perfect 10 Rights of Publicity,  
7 as the exclusive assignee of publicity rights, including in the names and likenesses,  
8 of certain Perfect 10 models. Attached hereto as Exhibit 5, and by this reference  
9 incorporated herein, is a list of the primary models whose rights of publicity, as  
10 assigned to Perfect 10, constitute the Perfect 10 Rights of Publicity. Largely as a  
11 result of the efforts and expenditures of Perfect 10, the names and likenesses of  
12 these Perfect 10 models have received widespread recognition, particularly among  
13 the consumers and potential consumers of adult entertainment products.

14 110. Defendants have infringed the Perfect 10 Rights of Publicity by using  
15 the names and photographs of Perfect 10 models in readily identifiable ways to  
16 advertise, promote, and attract attention to their own websites and to the Stolen  
17 Content Websites. Defendants have knowingly used the Perfect 10 Rights of  
18 Publicity, without the prior consent of Perfect 10 or any authorized party, on or in  
19 connection with products, merchandise, goods, or services, or in advertising them.

20 111. Additionally, Defendants have aided and abetted the Stolen Content  
21 Websites in misappropriating the Perfect 10 Rights of Publicity. Defendants have  
22 knowingly induced, caused and/or materially contributed to the unauthorized use  
23 of the Perfect 10 Rights of Publicity by the Stolen Content Websites and by  
24 Defendants' consumers and advertisers. Defendants had and have the right and  
25 ability to supervise and/or control the unauthorized conduct of the Stolen Content  
26 Websites, but have failed and refused to exercise such supervision and/or control.  
27 As a direct and proximate result of such failure and refusal, Defendants and their

1 advertisers, consumers, and Stolen Content Websites have derived a direct  
2 financial benefit.

3 112. By reason of Defendants' acts and conduct, Perfect 10 has suffered  
4 substantial damage to its business in the form of diversion of trade, loss of profits,  
5 injury to goodwill and reputation, and a dilution of the value of its exclusive rights  
6 of publicity, all of which are not yet fully ascertainable.

7 113. Defendants' conduct is causing and, unless enjoined and restrained by  
8 this Court, will continue to cause Perfect 10 great and irreparable injury that cannot  
9 fully be compensated in money. Perfect 10 has no adequate remedy at law.  
10 Perfect 10 is entitled to injunctive relief prohibiting further infringements of its  
11 rights of publicity.

12 114. Perfect 10 is informed and believes, and on that basis avers, that the  
13 aforementioned acts of Defendants were willful, oppressive, fraudulent, or  
14 malicious, and Perfect 10 therefore is entitled to punitive damages.

15 115. Perfect 10 further is entitled to its attorneys' fees and statutory  
16 damages pursuant to California Civil Code § 3344(a).

17

18 **PRAYER FOR RELIEF**

19 WHEREFORE, plaintiff Perfect 10 prays for judgment against Defendants,  
20 and each of them, as follows:

21 1. That Defendants, and each of them, and their officers, agents,  
22 servants, employees, representatives, successors, and assigns, and all persons in  
23 active concert or participation with them, be enjoined from:

24 a. copying, reproducing, distributing, adapting, or publicly  
25 displaying the Perfect 10 Copyrighted Works;

26 b. posting photographs of Perfect 10 models on the internet;

27

1 c. using, authorizing the use of, copying, reproducing or  
2 imitating the Perfect 10 Marks, or any confusingly similar or colorable imitation  
3 thereof;

4 d. violating the Perfect 10 Rights of Publicity; and

5 e. inducing, causing, materially contributing to, and  
6 profiting from the foregoing acts committed by others.

7 2. That Defendants be ordered to destroy all photographs,  
8 documents, and other items, electronic or otherwise, in their possession, custody,  
9 or control, that infringe the copyrights, trademarks, or rights of publicity of Perfect  
10 10.

11 3. That Defendants be ordered to remove all links between their  
12 website and all Stolen Content Websites, and be prohibited from performing  
13 advertising and linking functions for such Stolen Content Websites.

14 4. For restitution in the amount of the benefit to Defendants by  
15 reason of their unlawful conduct.

16 5. For Perfect 10's actual damages.

17 6. For an full accounting under supervision of this Court of all  
18 profits, income, receipts, or other benefits derived by Defendants as a result of  
19 their unlawful conduct.

20 7. For statutory damages under the Copyright Act.

21 8. For treble damages under the Lanham Act.

22 9. For statutory damages under California Civil Code  
23 Section 3344.

24 10. For punitive damages.

25 11. For attorneys' fees and full costs.

26

27

28 Mitchell  
Silberberg &  
Knupp LLP

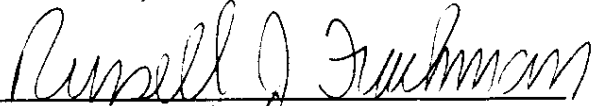
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12. For such other and further relief as this Court deems just and appropriate.

RUSSELL J. FRACKMAN  
JEFFREY D. GOLDMAN  
MITCHELL SILBERBERG & KNUPP LLP

JEFFREY N. MAUSNER  
BERMAN, MAUSNER & RESSER,  
A LAW CORPORATION

DANIEL J. COOPER  
PERFECT 10, INC.

By:   
Russell J. Frackman  
Attorneys for Plaintiff

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**DEMAND FOR JURY TRIAL**

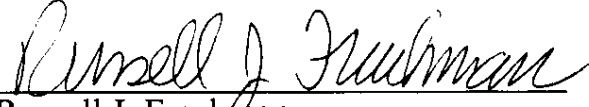
Perfect 10 hereby demands a jury trial pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: November 19, 2004

RUSSELL J. FRACKMAN  
JEFFREY D. GOLDMAN  
MITCHELL SILBERBERG & KNUPP LLP

JEFFREY N. MAUSNER  
BERMAN, MAUSNER & RESSER,  
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