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SOUTHERN DISTRICT OF CALIFORNIA

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LIGHTS OUT HOLDINGS, LLC. and
14 SHAWNE MERRIMAN

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

17 LIGHTS OUT HOLDINGS, LLC., a California
corporation and SHAWNE MERRIMAN, an
18 individual,

19 Plaintiffs,

20 v.

21 TILA NGUYEN, an individual, and LITTLE
MISS TRENDSETTER, INC., a California
22 corporation,

23 Defendant.

Case No.

09 CV 2742 H CAB
COMPLAINT FOR:-

- 1) COPYRIGHT INFRINGEMENT;
- 2) TRADEMARK INFRINGEMENT;
- 3) FEDERAL UNFAIR COMPETITION;
- 4) DILUTION OF FAMOUS MARK;
- 5) INTENTIONAL INTERFERENCE WITH CONTRACT;
- 6) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE; AND
- 7) COMMON LAW UNFAIR COMPETITION

*** JURY DEMANDED ***

DATE:
TIME:
TRIAL DATE:
COURTROOM NO.:

CR

1 Lights Out Holdings, LLC ("Lights Out") and Shawne Merriman ("Merriman") (collectively
2 "Plaintiffs") bring this suit for copyright infringement, trademark infringement, trademark dilution,
3 intentional interference with contract, intentional interference with prospective economic advantage,
4 and common law unfair competition against Tila Nguyen, an individual ("Nguyen"), and Little Miss
5 Trendsetter, Inc., a California corporation ("Little Miss") (collectively "Defendant"), allege as
6 follows:

7 **I. THE PARTIES**

8 1. Plaintiff Lights Out Holdings, LLC is a California limited liability company with
9 its principal place of business in California.

10 2. Plaintiff Shawne Merriman is an individual residing in the district, in California.

11 3. Upon information and belief, Defendant Tila Nguyen is an individual residing in
12 California.

13 4. Upon information and belief, Defendant Little Miss Trendsetter, Inc., a
14 California corporation with its principal place of business in California, and owning and jointly
15 operating with Defendant Tila Nguyen the website located at the URL's www.tilashotspot.com and
16 www.tilashotspot.buzznet.com.

17 5. Defendant's actions alleged herein were those of herself, her agents and/or
18 licensees.

19 6. On information and belief, Defendants Tila Nguyen and Little Miss Trendsetter,
20 Inc. were at all relevant times alleged herein acting as each others principals, agents, alter egos, a
21 single enterprise, and joint tortfeasors who acted with knowledge and intent in aiding and abetting
22 the other in the commission of their actions alleged herein.

23 **II. JURISDICTION AND VENUE**

24 7. This Court's jurisdiction rests upon 15 U.S.C. §§ 1121(a), 28 U.S.C. §§ 1338(a)
25 & (b), and 28 U.S.C. § 1367(a).

26 8. This Court has jurisdiction over the federal trademark infringement, dilution and
27 false advertising claims pursuant to 15 U.S.C. § 1121(a) 28 U.S.C. § 1338(a).

1 16. Defendant has used these images to drive consumers to her websites; to purchase
2 her goods and services, including music, jewelry, and a diamond line; and to attract users to pay for
3 access to VIP services.

4 17. Defendant posted infringing copies of the copyright work on the same webpage
5 she promoted a new, for-profit social networking website that was, on information and belief,
6 launched on or about November 5, 2009. *See* relevant pages attached as Exhibit C-2.

7 18. As a result of Defendant's misuse of these copyrighted works, on information
8 and belief, Defendant has financially profited, along with other benefits.

9 **Unauthorized Use of Plaintiffs' Famous LIGHTS OUT Mark**

10 19. Lights Out is the owner of the famous mark LIGHTS OUT, a federally registered
11 trademark, Reg. No. 2,885,212. A copy of that registration is attached as Exhibit D. Merriman has
12 an additional LIGHTS OUT federal trademark Application Serial No. 77,163,746, which has been
13 allowed by the USPTO. A status printout of that application from the USPTO website, listing its
14 services, is attached as Exhibit E.

15 20. By virtue of continuous use, the acquisition of substantial goodwill and the
16 ubiquitous use of this mark, the above mark has become famous within the meaning of 15 U.S.C. §
17 1125(c).

18 21. On information and belief, Defendant controls and operates an Internet
19 homepage via the domain names tilashotspot.com and tilashotspot.buzznet.com. On information
20 and belief, these Internet websites are owned by Defendant. On information and belief, Defendant
21 owns, controls and/or operates a number of other for-profit websites, such as those located at the
22 domain names tilacasino.com and tilashotspotdating.com. These websites contain pay-to-
23 participate features and generate profit for Defendant (collectively these are referred to as "Tila
24 Websites"). On information and belief, Defendant also obtains advertising revenues from
25 advertisers on the Tila Websites, revenue that is directly tied to the number of visitors and traffic to
26 these Internet sites.

1 22. Defendant has used the trademark LIGHTS OUTS, and/or confusingly similar
2 marks to attract customers and consumers to the Tila Websites. This use is unauthorized.

3 23. Defendant has used the same protected mark in statements, on third-party
4 websites, and in other mediums. On information and belief, defendant has misused this mark for
5 the purpose of increasing her revenues, her exposure, traffic to the Tila Websites, and/or
6 opportunities for revenue in the future.

7 24. Defendant's use of Plaintiffs' LIGHTS OUT mark is unauthorized, and have
8 caused confusion and a likelihood of confusion.

9 25. Defendants' use of Plaintiffs LIGHTS OUT mark is likely to confuse consumers
10 into believing there is an affiliation, connection, sponsorship or other form of relationship between
11 Defendant and Plaintiffs which in fact does not exist. They are also likely to divert attention and
12 initial-interest from Plaintiffs to Defendant, for the financial profit of Defendant, and to the
13 detriment of the Plaintiffs.

14 26. Furthermore, Plaintiffs' famous mark is being substantially diluted by the above
15 uses, and is suffering actual dilution of the distinctive qualities of the mark.

16 **Defendant's Interference with Plaintiffs' Business Relations**

17 27. Plaintiff Merriman has an existing agreement with the San Diego Chargers
18 regarding his tenure as a football player for that team.

19 28. Lights Out had been negotiating an agreement with Wal-Mart Stores, Inc. ("Wal-
20 Mart") for the distribution of T-shirts and/or other apparel.

21 29. Plaintiffs Merriman and Lights Out have also have had other sponsorship
22 negotiations, licensing agreements, and/or endorsement agreements which have provided substantial
23 economic advantage for Plaintiffs in the past, and were by their terms and reasonable expectations
24 and probabilities to continue this economic advantage into the future.

25 30. Upon information and belief, Defendant knew of Plaintiffs' relations with these
26 third parties.

1 31. Intending to obtain her own economic advantage, and to destroy Plaintiffs'
2 economic advantages, Defendant set out to make unfounded charges regarding Plaintiffs on her
3 website, to the press, and/or to third parties. Defendant made these allegations knowing the
4 information would be communicated to third party businesses that have had relations with
5 Plaintiffs.

6 32. Defendant's unfounded allegations concerning Plaintiffs are false, have no basis,
7 and were made with malice to interfere with Plaintiffs' business dealings. Defendant admitted to
8 her friend, Jason Johnson, that the purpose of her unfounded allegations was to interfere with
9 Plaintiffs' agreements and business relationships.

10 33. These unfounded allegations include false statements that Plaintiff Merriman
11 choked and attacked Defendant on the morning of September 6, 2009; that Plaintiff Merriman
12 "sleeps with minors and forces them to take drugs;" that illegal drugs are manufactured in Plaintiff
13 Merriman's home "just for Shawne so that it won't show up in his blood test or drug test;" that
14 Plaintiff Merriman took the drug ecstasy and "smoked pot" on the night/morning of September 5-6,
15 2009, and other false, unfounded and outrageous statements.

16 34. Defendant made these untrue statements with an admitted knowledge that, by
17 generating controversy around Plaintiff Merriman, if she "is causing too much distraction for their
18 [sic] football [team], they will kick him out. AJ the GM for the team is already sick of him." See
19 ibit F.

20 35. Defendant has also admitted that she made knowingly false statements regarding
21 Plaintiffs, stating "yes that is why I did a '*spin*' now ... cuz [sic] now everyone is LOVINGGGG
22 me for all this sports talk and they are now like...f**k chargers N Shawne." See Exhibit G
23 (emphasis added).

24 36. As a result, Merriman's relationship with the San Diego Chargers has suffered
25 because of Defendant's statements and/or actions.

26 37. In addition, Wal-Mart has delayed its dealings with Plaintiffs.
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1 46. Lights Out has suffered damages in an amount to be established after proof at
2 trial.

3 47. Lights Out is further entitled to disgorge Defendant's profits for her willful sales
4 and unjust enrichment.

5 48. Lights Out's remedy at law is not adequate to compensate for injuries inflicted by
6 Defendant. Accordingly, Lights Out is entitled to temporary, preliminary and permanent injunctive
7 relief.

8 **SECOND CAUSE OF ACTION**

9 **TRADEMARK INFRINGEMENT**

10 **(15 U.S.C. § 1114 *et seq.* and Common Law)**

11 49. Plaintiffs incorporate by reference all other paragraphs contained in this
12 Complaint.

13 50. Plaintiffs own the LIGHTS OUT mark, registered on the principal register of the
14 United States Patent and Trademark Office as Reg. No. 2,885,212, and applied for as Application
15 Serial No. 77,163,746.

16 51. Defendant has used this mark or a confusingly similar variation of the mark in
17 connection with the sale, offering for sale, distribution or advertising of goods and/or services.

18 52. Defendant's use of the infringing mark has caused significant confusion in the
19 marketplace, is likely to cause both confusion and mistake, and is likely to deceive; the marks used
20 by Defendant are identical or substantially similar in sound, appearance and meaning to Plaintiffs'
21 trademark.

22 53. Such use was done willfully and with knowledge that such use would or was
23 likely to cause confusion and deceive others.

24 54. As a direct and proximate result of Defendant's trademark infringement,
25 Plaintiffs have been damaged within the meaning of 15 U.S.C. § 1114 *et seq.*

1 f. The mark was highly recognized in the United States, and was highly
2 affiliated with Plaintiffs;

3 g. On information and belief, there were no other parties that use the mark for
4 similar goods and services as those of Plaintiffs; and

5 h. The LIGHTS OUT mark has been registered on the principal register for a
6 sufficient length of time to qualify for incontestable status.

7 67. Pursuant to 15 U.S.C. § 1125(c) and Cal. B&P Code §§ 14247 & 14250,
8 Plaintiffs are entitled to an injunction sufficient to protect its famous mark from further dilution.

9 68. By reason of such wrongful acts, Plaintiffs are and were, and will be in the
10 future, deprived of, among others, the profits and benefits of business relationships, agreements, and
11 transactions with various third parties and/or prospective business relationship. Defendant has
12 wrongfully obtained profit and benefits instead of Plaintiffs. To the extent available, Plaintiffs are
13 entitled to compensatory damages and disgorgement of Defendant's said profits, in an amount to be
14 proven at trial.

15 **FIFTH CAUSE OF ACTION**

16 **INTENTIONAL INTERFERENCE WITH CONTRACT**

17 69. Plaintiffs incorporate by reference all other paragraphs contained in this
18 Complaint.

19 70. Plaintiff Merriman has had an existing contract with the San Diego Chargers.

20 71. Defendant knew of the existence of this contract at the time of her interference.

21 72. Defendant's actions were taken knowingly and intentionally, with the intent to
22 induce a third party to breach its contractual arrangements with Plaintiff Merriman, and on
23 information and belief, Defendant was substantially certain the interference would result.

24 73. Merriman's agreement was actually disrupted, and continues to be actually
25 disrupted, and Defendant's conduct alleged above directly and proximately caused this disruption.
26 This disruption includes, without limitation, making this arrangement more expensive and/or
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1 burdensome, and less profitable to Merriman, and has caused delayed activities under this
2 agreement that has caused Merriman to lose revenues.

3 74. As a result of this disruption, Merriman has been damaged in a significant
4 amount, believed to be in the millions of dollars, but to be established upon proof at trial.

5 75. Merriman's remedy at law is not adequate to compensate for injuries inflicted by
6 Defendant. Accordingly, Merriman is entitled to temporary, preliminary and permanent injunctive
7 relief.

8 76. Such acts, as alleged above, were done with malice, oppression and/or fraud, thus
9 entitling Merriman to exemplary and punitive damages.

10 **SIXTH CAUSE OF ACTION**

11 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

12 77. Plaintiffs incorporate by reference all other paragraphs contained in this
13 Complaint.

14 78. Plaintiffs have had numerous third-party existing business relationships,
15 including with Wal-Mart, and many prospective business relationships as well.

16 79. There was a probability of future economic benefit from these business
17 relationships, demonstrated by, among other things, Plaintiffs' past economic benefits from similar
18 business relationships, and the status of the relationships prior to Defendant's interference.

19 80. Defendant interfered with these existing and prospective business relationships.

20 81. Defendant's conduct was wrongful, separate and apart from the interference
21 itself, in that it consisted of trademark infringement, unfair competition, and/or copyright
22 infringement, as well as maliciously false accusations that fall outside of the range of acceptable
23 business practices accepted in the relevant community. Defendant also attempted to extort
24 concessions out of Plaintiffs without justification. Defendant had no privilege to engage in this
25 conduct.

26 82. Defendant knew and intended to interfere with Plaintiffs' prospective economic
27 advantage, and interference with these prospective economic relationships was actually and
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1 proximately caused as a result. On information and belief, Defendant knew such interference was
2 substantially certain to result.

3 83. Such acts, as alleged above, were done with malice, oppression and/or fraud, thus
4 entitling Plaintiffs to exemplary and punitive damages.

5 **SEVENTH CAUSE OF ACTION**

6 **COMMON LAW UNFAIR COMPETITION**

7 84. Plaintiffs incorporate by reference all other paragraphs contained in this
8 Complaint.

9 85. Plaintiffs have trademark rights throughout the entire United States to the mark
10 LIGHTS OUT.

11 86. Defendant has committed acts of unfair competition, including the practices and
12 conduct referred to in this Complaint. These actions constitute unlawful, unfair or fraudulent
13 business acts or practices, and/or unfair, deceptive, untrue or misleading business practices. The
14 actions were done in connection with sales or advertising.

15 87. As a direct and proximate result of Defendant's wrongful acts, Plaintiffs have
16 suffered and continues to suffer substantial pecuniary losses and irreparable injury to its business
17 reputation and goodwill. As such, Plaintiffs' remedy at law is not adequate to compensate for
18 injuries inflicted by Defendant. Accordingly, Plaintiffs are entitled to temporary, preliminary and
19 permanent injunctive relief.

20 88. By reason of such wrongful acts, Plaintiffs are and were, and will be in the
21 future, deprived of, among others, the profits and benefits of business relationships, agreements, and
22 transactions with various third parties and/or prospective business relationship. Defendant has
23 wrongfully obtained profit and benefits instead of Plaintiffs. Plaintiffs are entitled to compensatory
24 damages and disgorgement of Defendant's said profits, in an amount to be proven at trial.

25 89. Such acts, as alleged above, were done with malice, oppression and/or fraud, thus
26 entitling Plaintiffs to exemplary and punitive damages.

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1 WHEREFORE, Plaintiffs demands the following relief:

- 2 1. A judgment in favor of Plaintiffs and against Defendant on all counts;
- 3 2. A preliminary and permanent injunction from trademark and copyright infringement
4 and unfair business practices by Defendant, and dilution of a famous mark;
- 5 3. Damages in an amount to be determined at trial;
- 6 4. Defendant's unjust enrichment and/or disgorgement of Defendant's profits, such
7 damages trebled for willful infringement;
- 8 5. Exemplary and punitive damages;
- 9 6. Pre-judgment interest at the legally allowable rate on all amounts owed;
- 10 7. Statutory damages of up to \$2 million under 15 U.S.C. §1117(c);
- 11 8. Costs, expenses and fees under, among others, 15 U.S.C. § 1117(a) and/or 17 U.S.C.
12 § 505;
- 13 9. Restitution;
- 14 10. Attorney's fees under, among others, 15 U.S.C. § 1117(a) as an exceptional case;
- 15 and
- 16 11. Such other and further relief as this Court may deem just and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiffs hereby demand a jury trial as to all issues that are so triable.

19 Dated: December 8, 2009

MINTZ LEVIN COHN FERRIS
GLOVSKY AND POPEO P.C.

20
21 By: 

Andrew D. Skale, Esq.

22 Attorneys for Plaintiffs
23 LIGHTS OUT HOLDINGS, LLC. and
24 SHAWNE MERRIMAN

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