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 10 ENTREPRENEUR MEDIA, INC.

11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

13 ENTREPRENEUR MEDIA, INC., a
 14 California corporation,
 15 Plaintiff,

16 v.

17 E-SPIRIT HOLDINGS, LLC, a
 18 Nevada limited liability company, dba
 19 Female Entrepreneur; and DOES 1-10,
 20 Defendants.

21 CASE NO.
 22 SACV03-1479-DOC (AMx)

23 COMPLAINT FOR:

- 24 (1) FEDERAL COPYRIGHT INFRINGEMENT (17 U.S.C. § 501(a));
- 25 (2) FEDERAL TRADE DRESS INFRINGEMENT (15 U.S.C. § 1125(a));
- 26 (3) FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. § 1114(1)(a));
- 27 (4) FEDERAL TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN, AND UNFAIR COMPETITION (15 U.S.C. § 1125(a));
- 28 (5) STATE UNFAIR COMPETITION AND FALSE AND MISLEADING ADVERTISING (Cal. Bus. & Prof. Code §§ 17200, et seq., 17500 and 17535); and
- (6) STATE TRADEMARK INFRINGEMENT (California Common Law)

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 U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 SANTA ANA, CALIF.

FILED

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1 Plaintiff Entrepreneur Media, Inc., a California corporation ("EMI"),
2 by and through its counsel, brings this action against Defendants e-Spirit Holdings,
3 LLC, dba Female Entrepreneur, a Nevada limited liability company, and DOES 1-
4 10 (collectively "Defendants"), for damages arising out of Defendants' blatant and
5 willful infringement of EMI's copyrights and trademarks, trade dress infringement,
6 and unfair competition.

7 PARTIES

- 8 1. EMI is, and at all times mentioned herein was, a California
9 corporation with its principal place of business in Irvine, California.
- 10 2. EMI alleges on information and belief that e-Spirit Holdings,
11 LLC, dba Female Entrepreneur ("e-Spirit"), is a Nevada limited liability company
12 with its principal place of business in Seattle, Washington, and has been doing
13 business as Female Entrepreneur. EMI further alleges on information and belief
14 that e-Spirit is the publisher of Female Entrepreneur magazine, which was
15 launched in or about the year 2003, and conducts and/or controls the activities
16 thereof.
- 17 3. EMI alleges on information and belief that e-Spirit owns and/or
18 operates the Female Entrepreneur web site under the domain name www.female-
19 entrepreneur.com.
- 20 4. EMI is ignorant of the true names and capacities of the
21 defendants sued herein under the fictitious names DOES 1-10, inclusive, whether
22 individual, corporate, or otherwise. EMI alleges on information and belief that
23 each of the defendants designated as a Doe is legally responsible in some manner
24 for the events referred to herein, and the proximate cause of the damages and
25 injuries herein alleged. EMI will amend this Complaint to allege the true names
26 and capacities of the Doe defendants when ascertained.
- 27 5. EMI alleges on information and belief that at all times herein
28 mentioned, e-Spirit and Defendants DOES 1-10, inclusive, were the agents,

1 servants, or employees of their co-defendants, and in doing the things hereinafter
2 alleged were acting within the course and scope of their authority as those agents,
3 servants, or employees, and with the permission and consent of their co-
4 defendants.

5 JURISDICTION AND VENUE

6 6. This Court has jurisdiction under 15 U.S.C. § 1121, 28 U.S.C.
7 §§ 1338(a) and 1338(b), and 28 U.S.C. § 1331, in that this action arises under 15
8 U.S.C. §§ 1125(a) and 1114(1)(a), and 17 U.S.C. § 501(a). This Court has
9 supplemental jurisdiction pursuant to 28 U.S.C. §§ 1338(b) and 1367 over the
10 claims brought under state law, in that the state claims arise out of the same
11 operative facts as the federal claims.

12 7. This Court also has jurisdiction under 28 U.S.C. § 1332, in that
13 the amount in controversy exceeds \$75,000 and the action is among citizens of
14 different states.

15 8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b),
16 as jurisdiction is not founded solely on diversity of citizenship and a substantial
17 number of the events giving rise to the claim arose in this district.

18 9. This Court has personal jurisdiction over Defendants because
19 each of them knowingly committed some or all of the acts that form the basis of
20 this Complaint in this District and purposely availed themselves of the privileges
21 of doing business in this District, as fully set forth herein.

22 ALLEGATIONS COMMON TO ALL CLAIMS

23 10. EMI is a well-known publisher of magazines, books, software,
24 and other products and services, which it markets and sells, and through which it
25 provides information of interest to small businesses and small business owners
26 (actual and prospective). Many of its products and services, including its flagship
27 magazine Entrepreneur, are, and have been continuously since 1978, identified,
28 marketed, sold, and distributed under the name ENTREPRENEUR.

1 11. Since 1978, EMI has continuously used the ENTREPRENEUR
2 mark to identify its magazines, business guides, video and audiotapes, computer
3 software programs, web pages, on-line services, consumer trade shows, seminars
4 and other educational services, and promotional advertising, membership, and
5 business services. EMI has also used its mark on its letterhead, promotional
6 literature, and media advertising throughout the United States (such printed
7 promotional literature is sometimes referred to herein as the "Entrepreneur Media,
8 Inc. - Media Kit (Print Version)" or the "EMI Media Kit"). In addition to
9 Entrepreneur, EMI has published, among other things, the magazines
10 Entrepreneurial Woman, Entrepreneur's Be Your Own Boss and Entrepreneur
11 International.

12 12. The magazine Entrepreneur has been published since at least
13 May 1978 and is currently published monthly with a paid circulation of more than
14 560,000 in the United States and its possessions, including more than 36,000 sales
15 each month through newsstands, as well as circulation in more than 60 countries.
16 Each month, over 1.9 million people read Entrepreneur. EMI sells more than
17 250,000 copies of its other magazines, books, and guides each year and, each
18 month, has between 1.4 million and 2.4 million unique visitors to, and between ten
19 million and thirteen and a half million page views of, its web site at
20 *www.entrepreneur.com* (such web site's electronic advertising text, graphics and
21 photos sometimes referred to herein as the "Entrepreneur Media, Inc. - Electronic
22 Media Kit" or the "EMI Electronic Media Kit").

23 13. EMI owns all rights to the ENTREPRENEUR mark for printed
24 publications, specifically including magazines, books, and published reports,
25 International Classes 9 and 16. The mark was registered in these classes on August
26 25, 1987, as No. 1,453,968 on the Principal Register and is now deemed
27 incontestable. The aforementioned ENTREPRENEUR mark is valid and
28

1 subsisting, and is in full force and effect. A true and correct copy of this
 2 registration is attached hereto as Exhibit A.

3 14. The ENTREPRENEUR mark has also been registered in the
 4 United States: on July 27, 1999, as No. 2,263,883 on the Principal Register for
 5 advertising and business services provided on the Internet (International Class 35);
 6 and on October 30, 2001, as No. 2,502,032 on the Principal Register (and
 7 previously on the Supplemental Register on May 2, 1995, as No. 1,892,783) for
 8 arranging and conducting trade shows, seminars, workshops, and other educational
 9 services (International Classes 35 and 41). True and correct copies of these
 10 registrations are attached hereto as Exhibit B. EMI also maintains a web site at
 11 *www.entrepreneur.com*, among others.

12 15. EMI has registrations for many other variations of the word
 13 "entrepreneur," including those set forth in the following table (collectively with
 14 ENTREPRENEUR and EMI's other marks, the "EMI Marks"):

15 <u>Mark</u>	<u>Reg. Number</u>	<u>Reg. Date</u>
16 ENTREPRENEURIAL WOMAN	2,190,653	9/22/98
17 ENTREPRENEUR EXPO	1,856,997	10/04/94
18	2,391,145	10/03/00
19 ENTREPRENEUR'S HOME OFFICE	2,174,757	7/21/98
20	2,293,884	11/23/99
21	2,412,238	12/12/00
22 ENTREPRENEUR'S FRANCHISE &	1,854,603	9/20/94
23 BUSINESS OPPORTUNITIES		
24 ENTREPRENEUR MAGAZINE ONLINE	2,215,674	1/5/99

25 16. Through substantial expenditures of time, money, labor, and
 26 other efforts to develop and market products under the EMI Marks, EMI has
 27 created a distinctive means of identifying itself as the source of high-quality goods
 28 under the EMI Marks. As a result of such promotional and marketing efforts, EMI

1 has established substantial public recognition of the EMI Marks which symbolizes
 2 valuable goodwill belonging to EMI, and the EMI Marks have acquired
 3 distinctiveness and secondary meaning.

4 17. EMI has also created and relies upon a vast body of advertising
 5 and promotional materials to sell its products and services; and EMI is the owner
 6 of U.S. Copyright Registrations for the advertising text, graphics, and photos that it
 7 has created and used on its web sites and in printed media kits to promote and sell
 8 EMI products and services, including those set forth in the following table:

9 <u>Description</u>	<u>Reg. Number</u>	<u>Reg. Date</u>
10 Entrepreneur Media, Inc. - Electronic 11 Media Kit	TX 5-639-548	1/13/03
12 Entrepreneur Media, Inc. - Media Kit (Print 13 Version)	TX 5-639-549	1/13/03

14 Certificates of registration from the Registrar of Copyrights for the
 15 Entrepreneur Media, Inc. - Electronic Media Kit and the Entrepreneur Media, Inc. -
 16 Media Kit (Print Version) are attached hereto as Exhibits C and D, respectively.

17 18. EMI prominently identifies its copyrights, and includes the
 18 symbol © to give notice of its copyright ownership, on its EMI Electronic Media
 19 Kit, EMI Media Kit, and its other promotional materials.

20 19. As a result of extensive distribution of the EMI Media Kit and
 21 the numerous visits made to its web site, EMI's trade dress—embodied in the web
 22 site and media kits' unique design, layout, and organization—has become instantly
 23 recognizable to the public, including the market of small businesses, small business
 24 owners, and people considering starting a small business. EMI has established
 25 substantial goodwill in its trade dress, and consumers have come to associate such
 26 trade dress with EMI's high quality of products and customer service.

27 20. EMI's media kits and web site have played an important role in
 28 EMI's success in growing its business through the years. Many orders for EMI

1 products are placed by customers viewing the EMI Electronic Media Kit or
2 receiving the EMI Media Kit.

3 21. The vast majority of all EMI products and services are sold by
4 EMI directly to end-user consumers through EMI's own sales and distribution
5 infrastructure, including EMI's own Internet site. Defendants are not authorized
6 retailers or distributors of any of EMI's products or services.

7 22. In or about the year 2002, without the knowledge or consent of
8 EMI, e-Spirit, by and through its own employees and/or the Doe defendants, began
9 distributing and displaying in interstate commerce, and in this District began
10 producing and distributing, in both print format and online, advertising text and
11 graphics under the name "Female Entrepreneur" that were substantially similar to
12 those protected by EMI's copyrights and trade dress, in connection with the sale,
13 offering for sale, distribution, advertising, and promotion of a published magazine
14 geared towards small businesses, small business owners, and people considering
15 starting a small business, in direct competition with EMI.

16 23. EMI alleges on information and belief that, in order to promote
17 their business, Defendants have been using the web site located at *www.female-*
18 *entrepreneur.com* and printed media kits under the name "Female Entrepreneur"
19 for advertising and promotional activities. Copies of the aforementioned web site
20 as it existed on or about January 9, 2003 and printed media kits are attached hereto
21 as Exhibit E and Exhibit F, respectively. Additionally, a copy of a media kit
22 obtained from Defendants' web site as it existed on or about September 5, 2003 is
23 attached hereto as Exhibit G.

24 24. EMI alleges on information and belief that Defendants
25 intentionally copied the advertising text and graphics from EMI's web site and
26 media kits, and incorporated them into Defendants' printed media kits and web
27 site, as they existed on or about January 9, 2003. Defendants have continued to
28 copy portions of the advertising text and graphics from EMI's web site and media

1 kits, and have incorporated them into Defendants' media kit, as it existed on
2 Defendants' web site on or about September 5, 2003. Defendants sometimes made
3 minor alterations to EMI's advertising text and graphics, such as replacing EMI's
4 demographic statistics with female-only demographics, changing fonts, or
5 replacing "Entrepreneur" graphics with "Female Entrepreneur" graphics. Despite
6 these minor differences, however, Defendants' media kits and web site were
7 copied and/or derived from EMI's media kits and web site. Defendants'
8 advertising text and graphics are identical, or virtually identical, to EMI's
9 advertising text and graphics.

10 25. Examples of near-identical advertising text and graphics from
11 EMI's and Defendants' media kits and web sites are attached hereto as Exhibits H
12 through L. Each Exhibit consists of pages of EMI's media kits (Exhibits H-2 and
13 H-4 through H-6) and EMI's web site (Exhibits I-1 through I-7) and the
14 counterpart pages of Defendants' media kits (Exhibits J-1 through J-7 and Exhibits
15 L-3 and L-6) and Defendants' web site (Exhibit K-3, K-4 and K-6). The text,
16 organization, and layout are virtually identical. Exhibits I-1 through I-7, consisting
17 of pages of EMI's web site, have been copied by Defendants' media kits as
18 illustrated by Exhibits J-1 through J-7 and L-3 and L-6, and have been copied by
19 Defendants' web site as illustrated by Exhibits K-3, K-4 and K-6. Exhibits H-2
20 and H-4 through H-6, consisting of pages of EMI's printed media kits, have been
21 copied by Defendants' media kits as illustrated by Exhibits J-2 and J-4 through J-6,
22 and L-6, and have been copied by Defendants' web site as illustrated by Exhibits
23 K-4 and K-6.

24 26. In or about the year 2003, Defendants started distribution of a
25 magazine entitled Female Entrepreneur, which, like EMI's magazine Entrepreneur
26 and in direct competition therewith, concerns and is targeted to small businesses,
27 and existing and prospective small business owners.

28

1 27. EMI alleges on information and belief that, in selecting and
2 using EMI's unique advertising text and graphics from EMI's media kits and web
3 site, Defendants have acted and are acting with the purpose of usurping and trading
4 off of the favorable reputation and valuable goodwill that EMI has established in
5 its EMI Marks and trade dress.

6 28. EMI alleges on information and belief that Defendants have
7 copied EMI's copyrighted material for use in connection with their competing
8 business, Female Entrepreneur, and in connection with the launch of their
9 competing magazine, Female Entrepreneur.

10 29. Defendants' use of the name FEMALE ENTREPRENEUR for
11 its business name and magazine name is likely to cause confusion and mistake
12 among customers and suppliers and mislead them into believing that Defendants'
13 products and/or services are authorized, licensed, or endorsed by EMI, and/or that
14 Defendants are affiliated, connected, or associated with EMI.

15 30. Internet users have come to expect that to reach the web site of
16 a company, they should be able to type in a derivative of the name or major
17 trademark of that company, followed by the ".com" designation. Consumers
18 familiar with the EMI Marks are likely to assume that EMI is affiliated with
19 *www.female-entrepreneur.com* because of the similarity between that domain
20 name, and the EMI Marks and the domain name of EMI's web site
21 *www.entrepreneur.com*. Accordingly, Defendants' use of the domain name
22 *www.female-entrepreneur.com* is likely to cause confusion and mistake among
23 customers and suppliers and mislead them into believing that Defendants' products
24 and/or services are authorized, licensed, or endorsed by EMI, and/or that
25 Defendants are affiliated, connected, or associated with EMI.

26 31. EMI has received inquires from clients and associates
27 expressing actual confusion as to EMI's association with Defendants.
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FIRST CLAIM FOR RELIEF
(FEDERAL COPYRIGHT INFRINGEMENT)
(17 U.S.C. § 501(a))
(AGAINST ALL DEFENDANTS)

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32. EMI hereby restates and incorporates by reference paragraphs 1 through 31 above, as though fully set forth herein.

33. EMI is, and was at the time prior to Defendants' wrongful conduct as described herein, the creator and owner of original, copyrightable material in its printed and online promotional materials, including the text and images contained therein, which have been published by EMI in its media kits and on its web site. EMI duly applied for and received from the Register of Copyrights certificates of registration for its EMI Media Kit and EMI Electronic Media Kit.

34. EMI prominently displays its copyrights and the symbol indicating their federal registration, ©, on its web site and in its media kits and other published materials.

35. EMI has made extensive use of its copyrighted advertising and promotional materials in interstate commerce in connection with the sale of its products and services, including its magazine Entrepreneur, among others.

36. EMI alleges on information and belief that Defendants intentionally copied, in whole or in substantial part, copyrighted materials from EMI's printed and/or online promotional materials, and have incorporated them into Defendants' infringing web site and media kits.

37. EMI has never authorized or licensed Defendants to use any of its copyrighted works, including the text and/or graphics therein.

38. Defendants' unauthorized use of EMI's copyrighted materials (or use of substantially similar materials) in connection with their media kits and web site constitutes copyright infringement in violation of 17 U.S.C. § 501(a).

1 39. EMI alleges on information and belief that the acts by
2 Defendants have caused and will cause substantial damage to its business
3 reputation and goodwill, as well as diversion of trade and loss of profits in amounts
4 to be determined at trial.

5 40. Pursuant to 17 U.S.C. §§ 504(a) and (b), EMI is entitled to
6 recover Defendants' profits together with EMI's damages, or alternatively,
7 statutory damages.

8 41. Pursuant to 17 U.S.C. §§ 504 and 505, EMI is entitled to
9 recover the full cost of this action and reasonable attorneys' fees.

10 42. Defendants' wrongful conduct as described above is continuing
11 and, unless enjoined by this Court, will cause irreparable damage, loss and injury
12 to EMI, for which EMI has no adequate remedy at law.

13 **SECOND CLAIM FOR RELIEF**

14 **(FEDERAL TRADE DRESS INFRINGEMENT)**

15 **(15 U.S.C. § 1125(a))**

16 **(AGAINST ALL DEFENDANTS)**

17 43. EMI hereby restates and incorporates by reference paragraphs 1
18 through 42 above, as though fully set forth herein.

19 44. Beginning on a date prior to Defendants' activities complained
20 of herein, EMI's trade dress, in the unique design, layout, and organization of its
21 web site and media kits as a whole, was inherently distinctive and had acquired
22 secondary meaning with the public in identifying EMI as the source of the products
23 and services advertised therein.

24 45. The precise organization, design, and layout of EMI's web site
25 and media kits, viewed as a whole, are unique and serve no functional purpose
26 except to identify the products and services advertised therein with EMI.

27 46. Due to the extensive distribution of EMI's media kits and the
28 large number of visitors to its web site over the years, the overall unique design,

1 layout, and organization of EMI's media kits and web site have acquired secondary
2 meaning with purchasers and the public, who associate such design, layout, and
3 organization with EMI. Moreover, the media kits and web site utilizing such
4 distinctive trade dress are understood by customers to be authorized, licensed,
5 affiliated with, and/or endorsed by EMI.

6 47. Defendants have intentionally and wrongfully copied the
7 distinctive trade dress of EMI's media kits and web site and are using such trade
8 dress in connection with a competing magazine.

9 48. Defendants are using the trade dress of EMI's media kits and
10 web site without the authorization, license, or permission of EMI. EMI alleges on
11 information and belief that Defendants misappropriated the trade dress of EMI's
12 media kits and web site in an effort to palm off their products and/or services as
13 EMI products and/or services and to trade upon the extensive goodwill associated
14 with the EMI name and EMI Marks.

15 49. Defendants' activities are intended to, and are likely to, lead the
16 public to conclude—incorrectly—that Defendants' goods and/or services are
17 manufactured, authorized, licensed, and/or endorsed by EMI, and/or that
18 Defendants are affiliated, connected, and/or associated with EMI, to the damage
19 and harm of EMI and the public. Defendants' activities constitute willful and
20 deliberate infringement of EMI's trade dress in violation of the Lanham Act,
21 including, but not limited to Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).
22 Accordingly, EMI is entitled to recover Defendants' profits and reasonable
23 royalties, together with EMI's damages, each of which may be trebled, as well as
24 costs of the action and reasonable attorneys' fees pursuant to Section 35(a) of the
25 Lanham Act, 15 U.S.C. § 1117(a).

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THIRD CLAIM FOR RELIEF
(FEDERAL TRADEMARK INFRINGEMENT)
(15 U.S.C. § 1114(1)(a))
(AGAINST ALL DEFENDANTS)

50. EMI hereby restates and incorporates by reference paragraphs 1 through 49 above, as though fully set forth herein.

51. By virtue of EMI's extensive circulation and sales of magazines and books and the large number of visitors to its web site, the public has come to associate the use of the EMI Marks with EMI and the products and/or services produced by it.

52. EMI has established extensive goodwill and a high-quality reputation that is symbolized and represented by the EMI Marks.

53. Defendants' unauthorized use of the EMI Marks in their trade name, magazine name, and domain name has caused, and is likely to continue to cause, actual confusion, mistake, and deception as to the origin of Defendants' products and/or services, to mislead purchasers and potential purchasers of EMI's products and/or services, and to mislead purchasers and potential purchasers of Defendants' products and/or services into believing that Defendants' products and/or services originate from, are affiliated with, or are sponsored by EMI.

54. The acts of Defendants constitute infringement of the EMI Marks.

55. The conduct of Defendants is intentional, malicious, and wanton, in that Defendants infringed and continue to infringe the EMI Marks (i) with the full knowledge that EMI owns and has the exclusive right to control the EMI Marks, (ii) with the intention of causing confusion and mistake and to deceive, and (iii) after notice from EMI to cease their unlawful activities.

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56. EMI alleges on information and belief that the acts by Defendants have caused and will cause monetary damage, loss, and injury to EMI in an amount to be determined at the time of trial.

57. Because Defendants' acts have been committed willfully, EMI is entitled to recover Defendants' profits and reasonable royalties together with EMI's damages, which may be trebled, as well as costs of the action and reasonable attorneys' fees pursuant to Section 35(a) of the Lanham Act, 15 U.S.C. § 1117.

58. The acts of infringement by Defendants, unless enjoined by this Court, will cause irreparable damage, loss, and injury to EMI, for which EMI has no adequate remedy at law.

FOURTH CLAIM FOR RELIEF
(FEDERAL TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN, AND UNFAIR COMPETITION)
(15 U.S.C. § 1125 (a))
(AGAINST ALL DEFENDANTS)

59. EMI hereby restates and incorporates by reference paragraphs 1 through 58 above, as though fully set forth herein.

60. Defendants, without authorization from EMI, used and continue to use the EMI Marks to promote their products.

61. Defendants' use of the EMI Marks has caused, and is likely to cause, confusion, mistake, and deception as to the affiliation, connection, or association of Defendants with EMI, and as to the origin, sponsorship, or approval of Defendants' products and/or services by EMI.

62. The conduct of Defendants is intentional, malicious, and wanton, in that Defendants infringed and continue to infringe the EMI Marks (i) with the full knowledge that EMI owns and has the exclusive right to control the

1 EMI Marks, (ii) with the intention of causing confusion and mistake and to
2 deceive, and (iii) after notice from EMI to cease their unlawful activities.

3 63. As a result of Defendants' conduct, EMI has suffered, and will
4 continue to suffer, a substantial loss of revenues and irreparable harm, unless
5 Defendants' conduct is enjoined by this Court.

6 64. Because Defendants' acts have been committed willfully, EMI
7 is entitled to an award of its reasonable attorneys' fees and costs and treble its
8 actual damages pursuant to 15 U.S.C. § 1117(a). EMI is also entitled to, among
9 other things, the cost of corrective advertising.

10 **FIFTH CLAIM FOR RELIEF**

11 **(STATE UNFAIR COMPETITION AND FALSE AND**
12 **MISLEADING ADVERTISING – CALIFORNIA)**

13 **(Cal. Bus. & Prof. Code §§ 17200 ET SEQ., 17500 and 17535)**

14 **(AGAINST ALL DEFENDANTS)**

15 65. EMI hereby restates and incorporates by reference paragraphs 1
16 through 64 above, as though fully set forth herein.

17 66. EMI alleges on information and belief that Defendants, with the
18 intent to sell their competing products and/or services, have disseminated, and
19 continue to disseminate, deceptive and misleading advertising, of which
20 Defendants knew or should have known, thereby impairing EMI's goodwill and
21 otherwise adversely affecting EMI's business and reputation. These acts constitute
22 false advertising under California Business and Professions Code Sections 17500
23 and 17535.

24 67. The EMI Marks are wholly associated with EMI due to its
25 extensive use thereof, and as such, EMI is deserving of having its marks
26 adequately protected with respect to the conduct of its business.

27 68. Based on the wrongful, unlawful, fraudulent and unfair acts
28 described herein, including Defendants' copyright and trademark infringement,

1 Defendants' unfair competition and unfair business practices constitute a violation
2 of California Business and Professions Code Sections 17200 and 17203.

3 69. Defendants' acts have impaired irreparably EMI's goodwill,
4 have created a likelihood of confusion, and have otherwise adversely affected
5 EMI's business and reputation by use of unfair and fraudulent business practices.

6 70. The conduct of Defendants is intentional, malicious, and
7 wanton, in that Defendants have infringed and continue to infringe the EMI Marks
8 (i) with the full knowledge that EMI owns and has the exclusive right to control the
9 EMI Marks, (ii) with the intention of causing confusion and mistake and to
10 deceive, and (iii) after notice from EMI to cease their unlawful activities.

11 71. As a result of Defendants' conduct, EMI has suffered, and will
12 continue to suffer, a substantial loss of revenues and irreparable harm, unless
13 Defendants' conduct is enjoined by this Court.

14 72. EMI is also entitled to damages, restitution in the form of
15 Defendants' profits, punitive damages, and other damages according to proof at
16 trial, including costs and attorneys' fees.

17 **SIXTH CLAIM FOR RELIEF**

18 **(STATE TRADEMARK INFRINGEMENT - CALIFORNIA)**

19 **(California Common Law)**

20 **(AGAINST ALL DEFENDANTS)**

21 73. EMI hereby restates and incorporates by reference paragraphs 1
22 through 72 above, as though fully set forth herein.

23 74. The EMI Marks have been used by EMI for several decades to
24 designate the business conducted by EMI.

25 75. EMI alleges on information and belief that Defendants have,
26 without authorization from EMI, used the EMI Marks.

27 76. Defendants' use of the EMI Marks has caused and is likely to
28 cause confusion, mistake and deception to consumers as to the affiliation,

1 connection, or association of Defendants with EMI, and as to the origin,
2 sponsorship, or approval of Defendants' products and/or services by EMI.

3 77. Defendants' unauthorized acts constitute direct infringements of
4 the EMI Marks in violation of California common law.

5 78. The conduct of Defendants is intentional, malicious, and
6 wanton, in that Defendants infringed and continue to infringe the EMI Marks (i)
7 with the full knowledge that EMI owns and has the exclusive right to control the
8 EMI Marks, (ii) with the intention of causing confusion and mistake and to
9 deceive, and (iii) after notice from EMI to cease their unlawful activities.

10 79. As a result of Defendants' conduct, EMI has suffered, and will
11 continue to suffer, a substantial loss of revenues and irreparable harm, unless
12 Defendants' conduct is enjoined by this Court. EMI is also entitled to other
13 damages according to proof at trial, including costs and attorneys' fees.

14 PRAYER FOR RELIEF

15 Wherefore, EMI prays for the following relief:

16 1. That the Court enter judgment in favor of EMI and against
17 Defendants on all counts alleged herein;

18 2. For temporary, preliminary, and permanent injunctive relief to
19 enjoin Defendants, their officers, agents, servants, employees, and attorneys, and
20 all other persons acting in concert or participating with them, from doing the
21 following:

22 a. Using the name FEMALE ENTREPRENEUR, or any
23 other name that is a colorable imitation thereof or likely to cause confusion with
24 the mark ENTREPRENEUR, in connection with goods and services that are
25 identical or similar to EMI's goods and services;

26 b. Using in commerce any false or misleading descriptions,
27 representations or designations of origin relating to Defendants' products and/or
28 services;

1 c. Unauthorized copying or other use of any of EMI's
 2 copyrighted works, including the EMI Media Kit and EMI Electronic Media Kit;
 3 and

4 d. Infringing the trade dress of EMI by copying the
 5 distinctive design, layout, and organization of the EMI Media Kit and/or EMI
 6 Electronic Media Kit.

7 3. Damages in the amount of the profits Defendants derived from
 8 their improper and/or unlawful conduct, and/or in the amount of reasonable
 9 royalties which should be paid to EMI as a consequence thereof, increased by such
 10 amount as this Court deems just and proper, together with EMI's damages which
 11 should be trebled or increased according to law;

12 4. The cost of corrective advertising;

13 5. Punitive and exemplary damages in an amount appropriate to
 14 punish the Defendants and to make an example of them to the community;

15 6. Attorneys' fees and costs;


16 7. For an order that Defendants are to destroy all documents,
 17 media kits, and magazines that contain any trademarks or service marks that
 18 violate any of the EMI Marks, or that contain any copyrighted material of EMI;

19 9. For an accounting of all profits Defendants derived from their
 20 unlawful conduct; and

21 10. Any other relief that this Court deems just and proper.

22 Dated: October 14, 2003

LATHAM & WATKINS LLP

By 
 Joanna R. Wolfe
 Attorneys for Plaintiff
 ENTREPRENEUR MEDIA, INC.