

4. This Court has jurisdiction over the unfair competition claim under the provisions of 28 U.S.C. § 1338(b), because this claim is joined with substantial and related claims under the trademark laws of the United States, 15 U.S.C. § 1051 *et seq.*

5. This Court has supplemental jurisdiction over the claims which arise under the laws of the State of Texas pursuant to 28 U.S.C. § 1367(a), as the claims are so related to the Federal claims that they form part of the same case or controversy and derive from a common nucleus of operative fact.

6. Venue lies properly in this judicial district and division under the provisions of 28 U.S.C. § 1391(b)(2) and (c)(3) because a substantive part of the elements or giving rise to the claims occurred in this judicial district and because Defendant does not reside in the United States and is thus deemed to reside in any judicial district in which exercise of personal jurisdiction is proper. Defendant is subject to the personal jurisdiction of this Court because the claims and causes of action arose through acts of Defendant committed in this judicial district.

Factual Allegations

7. For many years and since long prior to the acts of Defendant which are the subject of this Complaint, VPI and its predecessors-in-interest have published widely recognized magazines in the fields of professional and financial achievement and entrepreneurial management throughout the United States. The magazines are sold in association with one or more of the trademarks “SUCCESS[®]”, “SUCCESS![®]”, “SUCCESS FROM HOME[®]”, “SUCCESS FOR TEENS[®]”, and “SUCCESS FOUNDATION[®]” (collectively, the “SUCCESS[®] Marks”). An example of VPI’s goods sold under the SUCCESS[®] Marks is attached as Exhibit A.

8. VPI is the owner of Federal Trademark Registration No. 3,472,209 on the Principal Register for the trademark “SUCCESS[®]” for among other things “magazines pertaining

to the fields of professional, personal and financial achievement, and entrepreneurial management” in Class 16. A copy of the registration is attaches as Exhibit B. The Mark has been used continuously since its date of first use, which was at least as early as 1977. The registration is valid and subsisting, uncanceled, and unrevoked. The registration has become incontestable under 15 U.S.C. § 1065.

9. VPI is the owner of Federal Trademark Registration No. 1,334,275 on the Principal Register for the trademark “SUCCESS![®]” for “general interest magazines” in Class 16. A copy of the registration is attached as Exhibit C. The Mark has been used continuously since its date of first use, which was at least as early as 1984. The registration is valid and subsisting, uncanceled and unrevoked. The registration has become incontestable under 15 U.S.C. § 1065.

10. VPI is the owner of Federal Trademark Registration No. 3,096,744 on the Principal Register for the trademark “SUCCESS FROM HOME[®]” for “printed publications, namely, magazines, in the field of direct sales and marketing” in Class 16. A copy of the registration is attached as Exhibit D. The Mark has been used continuously since its date of first use, which was at least as early as 2005. The registration is valid and subsisting, uncanceled and unrevoked. The registration has become incontestable under 15 U.S.C. § 1065.

11. VPI is the owner of Federal Trademark Registration No. 3,573,672 on the Principal Register for the trademark “SUCCESS FOR TEENS[®]” for “publications, namely, books and magazines featuring information and resources for teens in the areas of education and personal and professional development” in Class 16. A copy of the registration is attached as Exhibit E. The Mark has been used continuously since its date of first use, which was at least as early as 2007. The registration is valid and subsisting, uncanceled and unrevoked.

12. VPI is the owner of Federal Trademark Registration No. 3,772,160 on the Principal Register for the trademark “SUCCESS FOR TEENS[®]” for “electronic publications, namely, prerecorded DVDs and webzines in the nature of downloadable magazines, all featuring information and resources for teens in the areas of education and personal and professional development” in Class 9. A copy of the registration is attached as Exhibit F. The Mark has been used continuously since its date of first use, which was at least as early as 2009. The registration is valid and subsisting, uncancelled and unrevoked.

13. VPI is the owner of Federal Trademark Registration No. 3,761,559 on the Principal Register for the trademark “SUCCESS FOUNDATION[®]” for “online publication of magazines and facilitators’ guides for teens and young adults in the field of education” in Class 41. A copy of the registration is attached as Exhibit G. The Mark has been used continuously since its date of first use, which was at least as early as 2009. The registration is valid and subsisting, uncancelled and unrevoked.

14. Prior to the acts of Defendant complained of herein, VPI has expended a substantial amount of money, energy, time and effort in continuously advertising and promoting the SUCCESS[®] Marks in connection with its goods. VPI continues to advertise and promote its goods to the trade and the public.

15. As a result of the care and skill exercised by VPI in the conduct of its business, by extensive advertising and marketing and by consistent production and supply of high quality goods sold under the SUCCESS[®] Marks, VPI has acquired an excellent reputation and extensive customer goodwill.

16. VPI is now known in the marketplace as the exclusive source of goods bearing the SUCCESS[®] Marks. The SUCCESS[®] Marks have acquired wide notoriety and symbolize the

reputation and goodwill that VPI now enjoys. Consequently, the SUCCESS[®] Marks constitute valuable assets of VPI. Growth and continuation of VPI's business depends in part upon the unique and distinctive nature of the SUCCESS[®] Marks and on the reputation and goodwill symbolized thereby.

17. Defendant is a direct competitor of VPI in selling magazines and publications in at least electronic form. Defendant has adopted and used the mark "KEY TO SUCCESS" (the "Infringing Mark") in commerce in association with its goods and has used it continuously and systematically in this judicial district and throughout the United States. An example of the Defendant's goods offered and sold under the Infringing Mark is attached as Exhibit H.

18. At no time has VPI authorized or approved Defendant's sale, offer for sale, distribution, or advertising of goods or services under the Infringing Mark.

Count I
Federal Trademark Infringement
(15 U.S.C. § 1114(1))

19. VPI repeats and realleges Paragraphs 1 through 18 as if fully set forth herein.

20. Defendant has infringed VPI's rights in the SUCCESS[®] Marks, in violation of 15 U.S.C. § 1114(1)(a), by conducting various acts, in commerce, without the consent of VPI, including use of a reproduction, counterfeit, copy or colorable imitation of registered marks, namely the SUCCESS[®] Marks, in connection with the sale, offering for sale, distribution and advertising of goods, namely magazines and publications, in at least electronic form, which are likely to cause confusion, or to cause mistake, and to deceive.

21. Defendant has infringed VPI's rights in the SUCCESS[®] Marks, in violation of 15 U.S.C. § 1114(1)(b), by conducting various acts without the consent of VPI, including reproducing, counterfeiting, copying and colorably imitating a registered mark, namely one or

more of the SUCCESS[®] Marks, and applying such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements, intended to be used in commerce, upon or in connection with the sale, offering for sale, distribution or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake or to deceive.

22. Defendant's acts of trademark infringement are fraudulent, deliberate, willful and malicious, and have been committed with the intent to cause injury to VPI and its property rights in the SUCCESS[®] Marks, and to cause confusion, mistake and deception.

Count II
False Designation of Origin
(15 U.S.C. § 1125(a))

23. VPI repeats and realleges Paragraphs 1 through 22 as if fully set forth herein.

24. For many years, and since long prior to the acts of the Defendant complained of herein, VPI has continuously marketed and sold its goods under the SUCCESS[®] Marks.

25. Each of the SUCCESS[®] Marks is inherently distinctive and represents goods which originate from a single source, namely VPI.

26. Alternatively, each of the SUCCESS[®] Marks has acquired a secondary meaning in the marketplace, because VPI has extensively advertised and sold uniformly high quality goods under the SUCCESS[®] Marks for many years. For this reason, the SUCCESS[®] Marks are now recognized by the public and the trade as representing goods which originate from a single source, namely VPI.

27. Defendant's acts are in violation of 15 U.S.C. § 1125(a)(1)(A) because Defendant has used a word, term, name, symbol or device, in commerce, namely the Infringing Mark, on its goods, which constitutes a false designation of origin, false or misleading description of fact, and

false or misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Defendant with VPI, or as to the origin, sponsorship or approval of Defendant's goods and commercial activities by VPI.

28. Defendant's acts are in violation of 15 U.S.C. § 1125(a)(1)(B) because Defendant has used a word, term, name, symbol or device, in commerce, namely the Infringing Mark, on its goods, which constitutes a false designation of origin, false or misleading description of fact, and false or misleading representation of fact, which in commercial advertising and promotion misrepresents the nature, characteristics, and qualities of Defendant's goods and commercial activities.

29. Defendant's acts of false designation of origin are fraudulent, deliberate, willful and malicious, and have been committed with the intent to cause injury to VPI and its property rights in the SUCCESS[®] Marks, and to cause confusion, mistake and deception.

Count III
Injury to Business Reputation and Dilution
(Tex. Bus. & Com. Code Ann. § 16.29)

30. VPI repeats and realleges Paragraphs 1 through 29 as if fully set forth herein.

31. Beginning at least as early as 1977, VPI and/or its predecessors-in-interest have adopted and used at least one of the SUCCESS[®] Marks in association with its goods. The SUCCESS[®] Marks have been used by VPI or those under its supervision and authority continuously since the respective dates of first use of each mark.

32. The SUCCESS[®] Marks are, each, inherently distinctive of the goods of VPI or have acquired distinctiveness. Each of the SUCCESS[®] Marks has been registered on the Principal Register of the United States Patent and Trademark Office. Each of the registrations is valid and subsisting.

33. Defendant is using a trademark and advertising program in commerce that is likely to cause dilution of the distinctive quality of one or more of the SUCCESS[®] Marks. Specifically, the use of the Infringing Mark in association with Defendant's goods is likely to create confusion as to the source of origin of Defendant's goods. Moreover, the distinctive quality of the SUCCESS[®] Marks will be blurred and tarnished through the actions of Defendant.

34. Defendant's violations of the Texas Trademark Act are fraudulent, deliberate, willful and malicious, and have been committed with the intent to cause injury to VPI and its property rights in the SUCCESS[®] Marks, and to cause confusion, mistake and deception.

Count IV
Unfair Competition
(Texas Common Law)

35. VPI repeats and realleges Paragraphs 1 through 34 as if fully set forth herein.

36. The acts of Defendant constitute unfair competition and trademark infringement under the common law of the State of Texas. VPI and/or its predecessors-in-interest have adopted and used one or more of the SUCCESS[®] Marks for use on and in connection with its goods since at least as early as 1977 and has used the trademarks continuously since their respective dates of first use. The SUCCESS[®] Marks identify VPI as a sole source of goods offered by VPI and distinguishes those goods from many others.

37. As a result of the care and skill exercised by VPI in the conduct of its business and particularly in the maintenance of high quality goods, by its extensive advertising, and by the extensive and continuous marketing efforts throughout the industry over many years, the goods offered under the SUCCESS[®] Marks have acquired a reputation for high quality. As a result of these efforts by VPI, consumers and the industry recognize the SUCCESS[®] Marks to identify VPI exclusively as a source of high quality goods. The SUCCESS[®] Marks have acquired wide

notoriety and symbolize the goodwill which VPI has created by the sale of dependable and high quality goods. Consequently, the SUCCESS[®] Marks constitute a valuable asset of VPI.

38. Subsequent to the adoption and use of the SUCCESS[®] Marks by VPI, Defendant began infringing the SUCCESS[®] Marks by advertising and selling competing and similar or identical goods under a trademark, namely the Infringing Mark, that is confusingly similar to and creates the same commercial impression as one or more of the SUCCESS[®] Marks. Such conduct represents unfair competition and misappropriation and is designed to cause confusion and mistake and to deceive purchasers into believing that Defendant's goods are somehow sponsored by, made by or associated with VPI.

39. On information and belief, Defendant has attempted to and has passed off on the public Defendant's goods as those of VPI.

40. Defendant's acts of false designation of origin and misappropriation are fraudulent, deliberate, willful and malicious, and have been committed with the intent to cause injury to VPI and its property rights in the SUCCESS[®] Marks, and to cause confusion, mistake and deception.

Allegations Of Damage

41. VPI repeats and realleges Paragraphs 1 through 40 as if fully set forth herein.

42. Because of Defendant's acts as alleged herein, VPI has suffered and will continue to suffer damage to its business, reputation and goodwill and to endure a loss of sales and profits in an amount yet to be determined.

43. Because of Defendant's acts as alleged herein, Defendant will be unjustly enriched by profits it has made through the sale of goods under the Infringing Mark.

44. Defendant's acts of infringement, unfair competition, dilution and violations of Texas statutory and common law were and are willful and deliberate.

45. Unless Defendant is enjoined from the acts complained of herein, VPI will suffer irreparable harm, for which VPI has no adequate remedy at law.

Demand For Jury Trial

46. Pursuant to Federal Rule of Civil Procedure 38(b), VPI demands a jury trial.

Prayer

WHEREFORE, VPI respectfully requests:

47. That Defendant, his officers, agents, servants, employees, attorneys, confederates and all persons in active concert or participation with any of them, be enjoined, immediately and preliminarily during the pendency of this action, and thereafter perpetually from:

A. Using the SUCCESS[®] Marks, or any reproduction, counterfeit, copy or colorable imitation of any of them, including but not limited to the Infringing Mark, in connection with the advertising, selling or offering for sale, goods that are the same or similar to those offered by VPI;

B. Using the SUCCESS[®] Marks, or any reproduction, counterfeit, copy or colorable imitation of them, including but not limited to the Infringing Mark, in any manner likely to cause confusion, to cause mistake or to deceive;

C. Selling or passing off, inducing, or enabling others to sell or pass off any goods or services similar to, associated, or connected with those offered by VPI;

D. Committing any acts, including, but not limited to marketing and advertising of any goods or services, which are likely to cause injury to VPI's business reputation and/or blur or tarnish the distinctiveness of any of the SUCCESS[®] Marks;

E. Committing any acts, including, but not limited to marketing and advertising, which are calculated to cause purchasers to believe that the goods of Defendant are those of VPI, in whole or in part, unless they are entirely such;

F. Otherwise competing unfairly with VPI in any manner, including, but not limited to, use of the Infringing Mark;

G. Deleting, destroying, altering, disposing of, concealing, tampering with or in any manner secreting any and all electronic files, web pages, business records, invoices, correspondence, books of account, receipts and other documentation relating or referring in any manner to providing, advertising, sale and offer for sale of any goods or services bearing the SUCCESS[®] Marks or any other trademark which is confusingly similar to the SUCCESS[®] Marks, including but not limited to the Infringing Mark;

48. That, after final hearing, Defendant be required to deliver up for destruction or, alternatively, to obliterate all infringing marks on its entire inventory of infringing items, including but not limited to magazines, printed publications, electronic publications, electronic files, webpages, signs, labels, packaging, advertisements, video and audio recordings, catalogs, molds, matrices and all electronic advertising of any kind and any other material in its possession bearing the SUCCESS[®] Marks or any other trademark which is confusingly similar to the SUCCESS[®] Marks, including but not limited to the Infringing Mark;

49. That for the next five (5) years, upon ten (10) days notice, VPI be permitted to inspect and audit Defendant's inventory, electronic files, and all business records to determine compliance with the Order issued by the Court;

50. That Defendant be ordered to account and pay over to VPI all damages sustained by VPI and profits realized by Defendant by reason of Defendant's unlawful acts as alleged

herein, and that such profits be trebled as provided by law because of the willfulness of Defendant's acts;

51. That VPI be awarded prejudgment and post-judgment interest;
52. That VPI be awarded its costs and reasonable attorney's fees; and
53. That VPI have such other and further relief as the Court deems just and proper.

Dated: August 27, 2013.

Respectfully submitted,

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