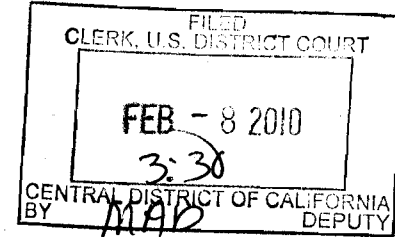


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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 SUMMIT ENTERTAINMENT, LLC,
18 a Delaware limited liability company,

19 Plaintiff,

20 v.

21 TOPICS ENTERTAINMENT, INC., a
22 Washington corporation; GREG
23 JAMES, an individual; RALPH
24 GALVAN, an individual; CHRIS
25 ABERNATHY, an individual; and
26 DOES 1-10, inclusive,

27 Defendants.

28 Case No. CV 10-00939-GHK(Ex)

**COMPLAINT FOR FALSE
DESIGNATION OF ORIGIN,
TRADEMARK INFRINGEMENT,
TRADEMARK DILUTION,
COPYRIGHT INFRINGEMENT,
AND UNFAIR COMPETITION**

(DEMAND FOR JURY TRIAL)

29 I/S
30 21
31 (T)

32 Plaintiff Summit Entertainment, LLC (“Summit”), for its complaint against
33 defendants Topics Entertainment, Inc. (“Topics”), Greg James (“James”), Ralph
34 Galvan (“Galvan”), and Chris Abernathy (“Abernathy”) (collectively,
35 “Defendants”), and Does 1-10, alleges as follows:

36 **JURISDICTION**

37 1. This action arises under the trademark and anti-dilution laws of the
38 United States, 15 U.S.C. § 1125, *et seq.*; the Copyright Act of 1976, as amended,

1 17 U.S.C. § 101, *et seq.*; and under the statutory and common law of unfair
2 competition. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) and
3 (b), and § 1367, 15 U.S.C. § 1121, and 17 U.S.C. § 501. This action arises under
4 the laws of the United States.

5 2. Venue is proper under 28 U.S.C. §§ 1391(b) and (c) in this case
6 because Summit resides in this District, and on information and belief, Defendants
7 are subject to personal jurisdiction in this District, and a substantial part of the
8 events or omissions giving rise to Summit's claims occurred in this District.

9 PARTIES

10 3. Summit is a Delaware limited liability company having its principal
11 place of business in Santa Monica, California.

12 4. On information and belief, Topics is a Washington corporation having
13 its principal place of business in Renton, Washington.

14 5. On information and belief, James is an individual residing in Medina,
15 Washington.

16 6. On information and belief, Galvan is an individual residing in
17 Washington.

18 7. On information and belief, Abernathy is an individual residing in Los
19 Angeles, California.

20 FACTS

21 Summit's Business, Trademarks, and Copyrights

22 8. Since 1991, Summit and its predecessors have been an active
23 participant in the motion picture industry. Summit finances, produces and
24 distributes films and related entertainment products.

25 9. Summit has also been involved in licensing trademarks associated with
26 the motion pictures that it produces and distributes for merchandise sales.

27 10. Summit produced and distributes the movie *Twilight*, the extremely
28 successful and popular film about a teenage girl, Isabella ("Bella") Swan, who falls

1 in love with a vampire, Edward Cullen. Bella's other suitor in the film is Jacob
2 Black, a werewolf. The film was released in the United States on November 21,
3 2008, and was promoted for many months prior to its release. Summit released a
4 second motion picture in the *Twilight* series, *The Twilight Saga: New Moon* ("New
5 Moon"), in the United States on November 20, 2009. Summit is releasing *New*
6 *Moon* for sale and rental on digital versatile disc ("DVD") on March 20, 2010.

7 11. Summit is the owner of the trademark TWILIGHT in block letters, and
8 in a distinctive stylized font (the "stylized TWILIGHT mark") (collectively "the
9 TWILIGHT Marks") and owns the trademark NEW MOON. Summit owns
10 36 pending federal trademark applications to register the TWILIGHT Marks and 19
11 pending federal trademark applications to register the NEW MOON trademark for
12 use on various types of goods and services. Summit's stylized TWILIGHT mark is
13 shown below:

14 The image shows the word "twilight" in a lowercase, serif font. The letter 'i' has a decorative dot. The word is enclosed in a rectangular border.

15
16 12. Summit has licensed the TWILIGHT Marks and the NEW MOON
17 mark to third parties to sell a wide variety of products, including motion pictures
18 and DVDs. Summit's licensees first sold motion pictures bearing the TWILIGHT
19 Marks in November of 2008 and DVDs bearing the TWILIGHT Marks in March of
20 2009. Summit continues to sell such DVDs.

21 13. Summit is the copyright owner of both the screenplay and the motion
22 pictures *Twilight* and *New Moon* (the "*Twilight* Motion Pictures"), as well as all
23 publicity, promotional, unit, and special shoot photography related thereto and the
24 trailers for the *Twilight* Motion Pictures. Summit has licensed its copyrighted
25 content to third parties for embodiment on DVDs featuring the *Twilight* Motion
26 Pictures, as well as for various items of merchandise related to the *Twilight* Motion
27 Pictures and bearing the TWILIGHT Marks and the NEW MOON mark.

28 14. Summit is the exclusive licensee of all rights of every kind and nature

1 in and to or relating to the documentary film *Twilight in Forks: The Saga of the*
2 *Real Town* (the “Authorized Documentary”), including but not limited to,
3 theatrical, non-theatrical, home entertainment/DVD, television, on-demand, internet
4 distribution, ship and aircraft rights, publishing, soundtrack, and merchandising,
5 and all other distribution rights. The Authorized Documentary was directed,
6 filmed, and produced by Westend Entertainment, LLC, dba Heckelsville Media,
7 LLC (“Heckelsville”). Summit acquired all exclusive rights to the Authorized
8 Documentary by way of a written license agreement with Heckelsville entered into
9 on September 4, 2009. The Authorized Documentary is about Forks, Washington
10 and other locales located in the Pacific Northwest featured in the *Twilight* Motion
11 Pictures and documents the relationship between these various locales and the
12 *Twilight* Motion Pictures. Heckelsville created packaging for the Authorized
13 Documentary which included the TWILIGHT Marks in a slightly different font and
14 other copyrightable material (“Original Authorized Documentary Cover”). A true
15 and correct copy of the Original Authorized Documentary Cover is attached hereto
16 as **Exhibit A**. Heckelsville owns the copyright in the Authorized Documentary and
17 in the Original Authorized Documentary Cover. Summit is the exclusive licensee
18 of Heckelsville’s rights in the Authorized Documentary and the Original
19 Authorized Documentary Cover. The current packaging and content of the
20 Authorized Documentary incorporates the TWILIGHT Marks and Summit’s
21 copyrighted content (“Authorized Documentary Cover”). A true and correct copy
22 of the Authorized Documentary Cover is attached hereto as **Exhibit B**. Summit
23 owns the copyright and all rights in the Authorized Documentary Cover. The
24 Authorized Documentary is set to be released for sale to the public by Summit on
25 March 20, 2010.

26 15. Applications to register the copyright in the Authorized Documentary,
27 the Original Authorized Documentary Cover, and the Authorized Documentary
28 Cover are pending with the U.S. Copyright Office.

1 **Defendant and The Infringing Actions**

2 16. On information and belief, Topics is a multimedia publisher, producer
3 and distributor of, among other things, software and DVDs.

4 17. On information and belief, Topics distributes its DVDs widely in
5 various outlets throughout the United States including general retail stores, media
6 retail stores, internet retail stores, bookstores, and other retail stores. In addition,
7 Defendant operates a website at <www.topics-ent.com> and markets its DVDs
8 from that website as well.

9 18. On information and belief, James is the President and Chief Executive
10 Officer of Topics, and directs the activities of Topics.

11 19. In or around August, 2009, Topics, James, and Heckelsville met in
12 person and on the telephone a number of times to discuss the possibility of Topics
13 acquiring the rights to the Authorized Documentary. Initially, James was not
14 familiar with the *Twilight* Motion Pictures and was lukewarm to the Authorized
15 Documentary. After researching the matter further, James told Heckelsville that
16 Topics was interested in acquiring the Authorized Documentary. During the course
17 of these meetings, Heckelsville and its principals discussed in detail the prospective
18 contents of the Authorized Documentary and provided Topics and James, with a
19 document detailing the contents thereof (the "One-Sheet") and a mock cover for the
20 Authorized Documentary, the Authorized Documentary trailer, and a retail box
21 sample of the Authorized Documentary. The mock cover included another, less
22 detailed synopsis of the Authorized Documentary and four framed photographs,
23 including photographs of a red truck known as Bella's Truck and the Welcome Sign
24 in Forks, Washington. True and correct copies of the One-Sheet and the mock
25 cover for the Original Authorized Documentary are attached hereto as **Exhibit C**
26 and the aforementioned **Exhibit A**, respectively.

27 20. In or around August 31, 2009, Heckelsville informed Topics that it was
28 going to enter a deal with Summit for Summit to acquire the exclusive rights to the

1 Authorized Documentary, and not with Topics.

2 21. Summit decided to release the Authorized Documentary on DVD on
3 March 20, 2010 in conjunction with its release of the *New Moon* DVD on
4 March 20, 2010. In November 2009, Summit began soliciting orders from retailers
5 desiring to stock and sell the Authorized Documentary. On January 15, 2010,
6 Summit officially announced the availability of the Authorized Documentary, and
7 retailers who purchased the Authorized Documentary were permitted to take pre-
8 orders for the Authorized Documentary from customers, who are then shipped the
9 Authorized Documentary on or about its release date. These advertisements and
10 listings included an image of the updated Authorized Documentary's DVD cover.
11 The Authorized Documentary Cover prominently features the title of the
12 Authorized Documentary and an image of a moonlit forest of trees. The back of the
13 Authorized Documentary Cover features a synopsis of the Authorized Documentary
14 and four photographs, including photographs of Bella's Truck and the Welcome
15 Sign in Forks, Washington.

16 22. The Authorized Documentary's manufacturer's suggested retail price is
17 \$19.99.

18 23. On January 27, 2010, Summit learned that Defendants had sent copies
19 of a flyer (the "Flyer") to national retailers, including, but not limited to, Best Buy,
20 Sam's Club, and Target, advertising the impending sale of a documentary it was
21 distributing for sale on DVD entitled *Forks: Bitten by Twilight* (the "Topics
22 Documentary"). A true and correct copy of the Flyer is attached hereto as
23 **Exhibit D**. The Flyer depicts the DVD's cover (the "Topics Documentary's
24 Cover") and a synopsis of the contents of the Topics Documentary. The Topics
25 Documentary's Cover features the title *Forks: Bitten by Twilight*, in which the term
26 TWILIGHT is the most prominent word. TWILIGHT is featured in the middle of
27 the Cover in red text, and is substantially larger than any of the other words
28 featured on the Cover. It is used in a similar manner on the binding of the Cover.

1 Topics uses the TWILIGHT trademark in a confusingly similar font as the stylized
2 TWILIGHT mark used by Summit for the *Twilight* Motion Pictures, on Twilight-
3 licensed merchandise, and on the Authorized Documentary. For comparison,
4 Topics' infringing use appears on the right.

5 **Summit's Stylized Mark** **Heckelsville Font** **Topics' Infringing Use**



9 24. The Topics Documentary's Cover also features an image of a moonlit
10 forest of trees, and the following quotation attributed to the author, Stephenie
11 Meyer, of the *Twilight* novel on which the *Twilight* motion picture is based: “. . .
12 And there, right where I wanted it to be, was a tiny town called 'Forks.'” On
13 information and belief, Topics did not receive Ms. Meyer's permission to use the
14 quote on the Cover. The Flyer features a synopsis of the Topics Documentary and
15 four framed photographs in a row, including photographs of Bella's Truck and the
16 Welcome Sign in Forks, the banner “Special Collector's Edition”, and a synopsis of
17 the content of the Topics Documentary. The Flyer lists the Topics Documentary's
18 manufacturer's suggested retail price as \$19.99.

19 25. Defendants have been actively selling the Topics Documentary to
20 national retailers, including Best Buy, Sam's Club, and Target, and various online
21 retailers, some of which are offering the Topics Documentary for pre-sale to the
22 public now, for delivery on or about the release date. Defendants are planning to
23 release the Topics Documentary on March 16, 2010, just four days before the
24 release of the *New Moon* DVD and the Authorized Documentary on March 20,
25 2010. Summit has been informed by such retailers that Topics has rushed its
26 release date to coincide with the release date of the *New Moon* DVD and the
27 Authorized Documentary on March 20, 2010. The *New Moon* DVD and
28 Authorized Documentary will be sold at some of the same retail outlets as the

1 Topics Documentary.

2 26. Topics did not receive authorization or permission from Summit to use
3 its TWILIGHT trademark in any format.

4 27. Topics' unauthorized use of the TWILIGHT mark and use of a cover
5 that is confusingly or substantially similar to the Authorized Documentary Cover
6 has already resulted in confusion as to the source of the Topics Documentary and is
7 likely to result in continued confusion amongst retailers and the general public.

8 28. On information and belief, the Topics Documentary was filmed and
9 directed by Galvan and Abernathy. On information and belief, per the terms of
10 their agreement, Topics was assigned the copyright in the Topics Documentary
11 from Galvan and Abernathy, or owns it as a work for hire. Galvan is an employee
12 of Topics, and has been so since well before August 2009.

13 29. On information and belief, the Topics Documentary features content
14 infringing Summit's copyrights in the *Twilight* Motion Pictures, and/or the
15 Authorized Documentary Cover, and/or its exclusive rights in the Authorized
16 Documentary, and the Original Authorized Documentary Cover.

17 30. On January 29, 2010, Summit mailed and faxed Topics a letter
18 demanding that Topics cease and desist its infringing activities. A true and correct
19 copy of Summit's demand letter to Topics is attached hereto as **Exhibit E**. James
20 responded, on behalf of Topics, by telephone to Summit on the afternoon of
21 January 29, 2010. James admitted to engaging in negotiations to distribute the
22 Authorized Documentary with Heckelsville. James also admitted that Topics' use
23 of the TWILIGHT mark was unauthorized and similar to the manner in which
24 Summit uses the TWILIGHT mark on DVDs and other merchandise. James denied
25 that Topics had committed copyright infringement.

26 31. In subsequent conversations, James claimed that the Topics
27 Documentary was produced by an independent producer named Ralph Galvan and
28 Galvan's partner. Galvan also made these representations to Summit in telephone

1 conversations the week of February 1, 2010. Summit later discovered that Galvan
2 is an employee of Topics, despite James' and Galvan's representations otherwise.
3 James also claimed that Topics had redesigned the Topics Documentary's Cover so
4 that it was allegedly no longer infringing. The image of the original Topics
5 Documentary's Cover appears on various internet retailers' websites, and is being
6 pre-sold to customers before its release date of March 16, 2010. No changes appear
7 to have been made to the Topics Documentary's Cover.

8 32. Topics' actions were willful. Topics is a sophisticated media company
9 well acquainted with federal and common law intellectual property laws, and
10 Topics knew that it had to receive Summit's permission or authorization to use its
11 copyrighted material and/or its trademarks. Topics only decided to film the Topics
12 Documentary after meeting with Heckelsville, discussing in detail with
13 Heckelsville the contents of the Authorized Documentary, viewing the One-Sheet
14 and original mock cover to the Authorized Documentary, and then not being given
15 the right to acquire the Authorized Documentary. Galvan and Abernathy did not
16 begin filming the documentary until, at the earliest, October 2009.

17 33. Defendants are continuing to promote, advertise, and sell the Topics
18 Documentary, despite Summit's demand to stop, and have informed Summit that
19 they intend to continue.

20 **FIRST CAUSE OF ACTION**

21 **(False Designation of Origin – 15 U.S.C. § 1125(a))**

22 34. Summit repeats and realleges each and every allegation of paragraphs 1
23 through 33, above, as though fully set forth herein.

24 35. Defendants' actions as alleged herein constitute a false designation of
25 origin in violation of 15 U.S.C. § 1125(a).

26 36. The use of the TWILIGHT Marks and the use of the Topics
27 Documentary's Cover by Defendants constitutes a false description or
28 representation that wrongfully and falsely designates the Topics Documentary as

1 originating from Summit, or being associated or connected with Summit or the
2 *Twilight* Motion Pictures, or licensed, approved, or authorized by Summit.

3 37. As a direct and proximate result of Defendants' wrongful acts, Summit
4 has suffered and continues to suffer and/or is likely to suffer damage to its
5 trademarks, business reputation, and goodwill. Defendants will continue to use
6 and/or will restart the use of, unless restrained, the TWILIGHT Marks and the
7 Topics Documentary's Cover and will cause irreparable damage to Summit.
8 Summit has no adequate remedy at law and is entitled to an injunction restraining
9 Defendants, their officers, agents, and employees, and all persons acting in concert
10 with Defendants, from engaging in further acts of false designation of origin.

11 38. Summit is further entitled to recover from Defendants the actual
12 damages that it sustained and/or is likely to sustain as a result of Defendants'
13 wrongful acts. Summit is presently unable to ascertain the full extent of the
14 monetary damages that it has suffered and/or is likely to sustain by reason of
15 Defendants' acts of false designation of origin.

16 39. Summit is further entitled to recover from Defendants the gains,
17 profits, and advantages that Defendants have obtained as a result of its wrongful
18 acts. Summit is presently unable to ascertain the extent of the gains, profits, and
19 advantages that Defendants have realized by reason of their acts of false
20 designation of origin.

21 40. Because of the willful nature of Defendants' wrongful acts, Summit is
22 entitled to an award of treble damages and increased profits pursuant to 15 U.S.C.
23 § 1117 and destruction of the Topics Documentary under 15 U.S.C. § 1118.

24 41. Summit is also entitled to recover its attorneys' fees and costs of suit
25 pursuant to 15 U.S.C. § 1117.

26 **SECOND CAUSE OF ACTION**

27 **(Trademark Infringement)**

28 42. Summit repeats and realleges each and every allegation of paragraphs

1 1 through 41, above, as though fully set forth herein.

2 43. Defendants have used in commerce, without Summit's permission, the
3 TWILIGHT Marks in a manner that is likely to cause confusion with respect to the
4 source and origin of the Topics Documentary and is likely to cause confusion or
5 mistake and to deceive purchasers as to the affiliation, connection, or association of
6 Summit with Defendants and/or their products.

7 44. Defendants' acts constitute infringement of the TWILIGHT Marks in
8 violation of the common law.

9 45. As a direct and proximate result of Defendants' wrongful acts, Summit
10 has suffered and continues to suffer and/or is likely to suffer damage to its
11 trademark, business reputation, and goodwill. Defendants will continue to use
12 and/or will restart the use of, unless restrained, the TWILIGHT Marks and will
13 cause irreparable damage to Summit. Summit has no adequate remedy at law and is
14 entitled to an injunction restraining Defendants, their officers, agents, and
15 employees, and all persons acting in concert with Defendants, from engaging in
16 further acts of infringement.

17 46. Summit is further entitled to recover from Defendants the actual
18 damages that it sustained and/or is likely to sustain as a result of Defendants'
19 wrongful acts.

20 47. Summit is further entitled to recover from Defendants the gains,
21 profits, and advantages that Defendants have obtained as a result of their wrongful
22 acts.

23 48. Because of the willful nature of Defendants' wrongful acts, Summit is
24 entitled to an award of punitive damages under the common law.

25 **THIRD CAUSE OF ACTION**

26 **(Dilution -- 15 U.S.C. § 1125(c); Cal. Bus. & Prof. Code § 14330)**

27 49. Summit repeats and realleges each and every allegation of paragraphs 1
28 through 48, above, as though fully set forth herein.

1 50. Summit has used the TWILIGHT Marks to identify its products,
2 including DVDs, relating to the *Twilight* Motion Pictures before Defendants began
3 promoting and selling the Topics Documentary or otherwise used the TWILIGHT
4 Marks. The TWILIGHT Marks are inherently distinctive and have acquired
5 distinction through Summit's extensive, continuous, and exclusive use of the
6 TWILIGHT Marks.

7 51. The TWILIGHT Marks are famous and distinctive within the meaning
8 of 15 U.S.C. §§ 1125(c)(1) and 1127 and Cal. Bus. & Prof. Code § 14330.

9 52. Defendants' use of the TWILIGHT Marks is likely to dilute the
10 distinctive quality of Summit's mark in violation of 15 U.S.C. § 1125(c) and Cal.
11 Bus. & Prof. Code § 14330.

12 53. Defendants' acts complained of herein are likely to damage Summit
13 irreparably. Summit has no adequate remedy at law for such wrongs and injuries.
14 The damage to Summit includes harm to its trademarks, goodwill, and reputation
15 that money cannot compensate. Summit is, therefore, entitled to a preliminary and
16 permanent injunction enjoining Defendants' use of the TWILIGHT Marks in
17 connection with the promotion, advertisement and sale of any goods by Defendants.

18 54. Summit is further entitled to recover from Defendants its actual
19 damages sustained by Summit as a result of Defendants' wrongful acts. Summit is
20 presently unable to ascertain the full extent of the monetary damages it has suffered
21 by reason of Defendants' acts of dilution.

22 55. Summit is further entitled to recover from Defendants the gains,
23 profits, and advantages Defendants have obtained as a result of their wrongful acts.
24 Summit is presently unable to ascertain the extent of the gains, profits and
25 advantages Defendants have realized by reason of Defendants' willful acts of
26 dilution.

27 56. Because of the willful nature of Defendants' actions, Summit is
28 entitled to all remedies available under 15 U.S.C. §§ 1117 and 1118.

1 **FOURTH CAUSE OF ACTION**

2 **(Copyright Infringement)**

3 57. Summit repeats and realleges each and every allegation of paragraphs 1
4 through 56, above, as though fully set forth herein.

5 58. The *Twilight* Motion Pictures, the Authorized Documentary, and the
6 Authorized Documentary Cover are all original works of authorship owned by
7 Summit and are copyrightable subject matter under the laws of the United States.
8 The *Twilight* Motion Pictures are the subject of valid copyright registrations --
9 specifically, registration nos. PA0001616599 and PA0001653512 owned by
10 Summit. The Authorized Documentary is the subject of pre-registration number
11 PRE000002872, filed by Heckelsville, along with a pending application for actual
12 registration. The Original Authorized Documentary Cover and Authorized
13 Documentary Cover are the subject of pending copyright applications, filed with
14 the U.S. Copyright Office. Summit will amend its complaint to allege the copyright
15 registrations in the Authorized Documentary, the Original Authorized Documentary
16 Cover, and the Authorized Documentary Cover once they issue. The Original
17 Authorized Documentary Cover and the Authorized Documentary Cover were fixed
18 in a tangible medium by printing of the images and/or by uploading the images to a
19 hard drive and publishing the images bearing the Authorized Documentary Cover
20 and the Original Authorized Documentary Cover.

21 59. Summit is the copyright owner of the *Twilight* Motion Pictures and the
22 Authorized Documentary Cover, and at all times relevant to the complaint, Summit
23 is and has been the sole exclusive authorized licensor of the *Twilight* Motion
24 Pictures and the Authorized Documentary Cover in the United States in connection
25 with the issuance of licenses for use of the *Twilight* Motion Pictures and the
26 Authorized Documentary's Cover. Summit is the exclusive licensee of all rights
27 associated with the Authorized Documentary and the Original Authorized
28 Documentary Cover.

1 60. Defendants had access to the *Twilight* Motion Pictures through their
2 wide theatrical release and Summit's wide release of *Twilight* on DVD. On
3 information and belief, Galvan is a fan of the *Twilight* Motion Pictures. Defendants
4 had access to the contents of the Authorized Documentary and the Original
5 Authorized Documentary Cover through their aforementioned detailed discussions
6 with Heckelsville regarding the contents of the Authorized Documentary, and
7 receipt of materials relating to the Authorized Documentary and receipt of the
8 Original Authorized Documentary Cover from Heckelsville prior to making the
9 Topics Documentary. Defendants had access to the Authorized Documentary
10 Cover through its proliferation over the internet, which Galvan admits having
11 reviewed.

12 61. Defendants have violated Summit's exclusive rights in and to the
13 *Twilight* Motion Pictures, the Authorized Documentary, the Original Authorized
14 Documentary Cover, and/or the Authorized Documentary Cover by unlawfully
15 using, reproducing, displaying, and distributing them in the Topics Documentary
16 and the Topics Documentary's Cover without authorization and by unlawfully
17 preparing derivative works from the *Twilight* Motion Pictures, the Authorized
18 Documentary, the Original Authorized Documentary Cover, and/or the Authorized
19 Documentary Cover.

20 62. Summit is informed and believes and on that basis alleges that
21 Defendants had full knowledge that their acts were wrongful and unlawful and have
22 continued to infringe said copyrights, throughout the United States and various
23 other territories of the world. Defendants continued to market and display the
24 Topics Documentary's Cover and sell the Topics Documentary after Summit sent
25 to Defendants the first cease and desist letter informing Topics that Defendants' use
26 of the *Twilight* Motion Pictures, the Authorized Documentary, the Original
27 Authorized Documentary Cover, and/or the Authorized Documentary Cover
28 infringed its copyrights and/or exclusive rights, and after Topics and James

1 represented that they were going to alter the Topics Documentary's Cover as to
2 make it allegedly non-infringing. Defendants' infringing acts were and continue to
3 be committed willfully.

4 63. By reason of the foregoing, Summit has suffered damages in an
5 amount to be determined at trial, and is entitled, at its election, to either (a) all
6 damages suffered by Summit, along with all gains, profits and advantages derived
7 by Defendants from the acts of infringement, plus exemplary and punitive damages
8 in amounts to be proven at trial, or (b) statutory damages as provided for in the
9 Copyright Act of the United States.

10 64. Summit is also entitled to attorneys' fees and a preliminary and
11 permanent injunction under the Copyright Act.

12 **FIFTH CAUSE OF ACTION**

13 **(Statutory and Common Law Unfair Competition)**

14 65. Summit repeats and realleges each and every allegation of paragraphs 1
15 through 64, above, as though fully set forth herein.

16 66. By reason of the foregoing, Defendants have been, and are, engaged in
17 "unlawful, unfair or fraudulent business practices" in violation of §§ 17200 *et seq.*
18 of the California Bus. & Prof. Code and acts of unfair competition in violation of
19 the common law.

20 67. Defendants' acts complained of herein have damaged and will continue
21 to damage Summit irreparably. Summit has no adequate remedy at law for these
22 wrongs and injuries. The damage to Summit includes harm to its trademarks,
23 goodwill, and reputation in the marketplace that money cannot compensate.
24 Summit is therefore entitled to: (a) injunctive relief restraining and enjoining
25 Defendants and their agents, servants, employees, and attorneys, and all persons
26 acting thereunder, in concert with, or on their behalf, from using the TWILIGHT
27 Marks and the Topics Documentary's Cover, any colorable imitation or variation
28 thereof, or any mark, name, symbol, or logo which is confusingly similar thereto, in

1 connection with the marketing or sale of any goods or services by Defendants; (b)
2 injunctive relief restraining and enjoining Defendants and their agents, servants,
3 employees, and attorneys, and all persons acting thereunder, in concert with, or on
4 their behalf, from reproducing content or artwork owned by Summit in connection
5 with the marketing or sale of any goods or services by Defendants; (c) Summit's
6 actual damages sustained as a result of Defendants' wrongful acts; (d) an
7 accounting of Defendants' profits from their sales of any products bearing the
8 TWILIGHT Marks or containing copyrighted content or other artwork owned by
9 Summit, or any other goods which make use of the TWILIGHT Marks or content
10 or other artwork owned by Summit; (e) the award of Defendants' unjust profits, as
11 well as sums sufficient to compensate Summit for all harm suffered as a result of
12 Defendants' conduct; and (f) punitive damages.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Summit prays that this Court enter judgment against
15 Defendants as follows:

16 1. Finding that Defendants have violated 15 U.S.C. § 1125(a) and the
17 common law, have infringed the TWILIGHT Marks under the common law, have
18 infringed Summit's copyrights under 17 U.S.C. § 501, have violated 15 U.S.C.
19 § 1125(c)(1) and Cal. Bus. & Prof. Code § 14330, and have violated Cal. Bus. &
20 Prof. Code § 17200 and the common law by engaging in unlawful, unfair, and
21 fraudulent business practices;

22 2. Ordering that Defendants and their subsidiaries, officers, agents,
23 servants, directors, employees, servants, partners, representative, assigns,
24 distributors, successors, related companies, and attorneys and all persons in active
25 concert or participation with Defendants or with any of the foregoing be enjoined
26 preliminarily during the pendency of this action and permanently thereafter from:

27 a. Manufacturing, transporting, promoting, importing,
28 advertising, publicizing, distributing, offering for sale, or selling any goods bearing

1 the TWILIGHT Marks or the Topics Documentary's Cover or any other mark,
2 name, symbol, or logo which is likely to cause confusion or to cause mistake or to
3 deceive persons into the erroneous belief that any goods that Defendants caused to
4 enter the stream of commerce are sponsored, licensed, or endorsed by Summit, are
5 authorized by Summit, or are connected or affiliated in some way with Summit, the
6 *Twilight* Motion Pictures, or the Authorized Documentary;

7 b. Manufacturing, transporting, promoting, importing,
8 advertising, publicizing, distributing, offering for sale, or selling any goods bearing
9 the TWILIGHT Marks or any other mark, name, symbol, or logo that is a copy or
10 colorable imitation of, incorporates, or is confusingly similar to the TWILIGHT
11 Marks;

12 c. Falsely implying Summit's endorsement of Defendants'
13 goods or engaging in any act or series of acts which, either alone or in combination,
14 constitutes unfair methods of competition with Summit and from otherwise
15 interfering with, or injuring the TWILIGHT Marks or the goodwill associated
16 therewith;

17 d. Copying, displaying, featuring, or using the *Twilight*
18 Motion Pictures, the Authorized Documentary, the Original Authorized
19 Documentary Cover, the Authorized Documentary Cover, or any other
20 copyrightable subject matter from or related to the *Twilight* Motion Pictures, the
21 Authorized Documentary, the Original Authorized Documentary Cover, the
22 Authorized Documentary Cover, or any works substantially similar thereto, or
23 engaging in any act in violation of Summit's copyrights, including but not limited
24 to, selling, promoting, advertising, or distributing the Topics Documentary;

25 e. Engaging in any act which is likely to dilute the
26 distinctive quality of the TWILIGHT Marks and/or injures Summit's business
27 reputation;

28 f. Representing or implying that Defendants are in any way

1 sponsored by, affiliated with, or endorsed or licensed by Summit; or

2 g. Knowingly assisting, inducing, aiding, or abetting any
3 other person or business entity in engaging in or performing any of the activities
4 referred to in paragraphs 2(a) to (f) above.

5 3. Ordering that Summit is the exclusive owner of the TWILIGHT Marks
6 and that such marks are valid;

7 4. Ordering that Summit is the exclusive owner of the copyrights in the
8 *Twilight* Motion Pictures and/or the Authorized Documentary Cover and that such
9 copyrights are valid.

10 5. Ordering that Defendants be required to recall and deliver to Summit
11 for destruction all DVDs of the Topics Documentary (including but not limited to
12 DVDs that have been produced even if they have not yet been released), which bear
13 the TWILIGHT Marks, the Topics Documentary's Cover, or any other trademarks,
14 names, logo, trade dress, or packaging that are confusingly or substantially similar
15 to the TWILIGHT Marks and/or which contain copyrighted content embodied in
16 the *Twilight* Motion Pictures, the Authorized Documentary, the Original
17 Authorized Documentary Cover, and the Authorized Documentary Cover, or other
18 copyrighted works, the copyrights to which are owned by Summit;

19 6. Granting an award of damages suffered by Summit according to proof
20 at the time of trial;

21 7. Ordering that Defendants account to Summit for any and all profits
22 earned as a result of Defendants' acts of infringement in violation of Summit's
23 rights under the Lanham Act, the Copyright Act, Cal. Bus. & Prof. Code § 17200,
24 *et seq.*, and the common law;

25 8. Granting an award of three times the amount of compensatory
26 damages and increased profits pursuant to 15 U.S.C. § 1117;

27 9. Granting an award of statutory damages pursuant to 17 U.S.C.
28 § 504(c);

- 1 10. Granting an award of punitive damages for the willful and wanton
- 2 nature of Defendant's aforesaid acts;
- 3 11. For pre-judgment interest on any recovery by Summit;
- 4 12. Granting an award of Summit's costs, expenses, and reasonable
- 5 attorneys' fees; and
- 6 13. Granting such other and further relief as is just and proper.

7 Respectfully submitted,
8 MANATT, PHELPS & PHILLIPS, LLP

9
10 Dated: February 8, 2010

11 By: 
12 Jill M. Pietrini
13 Barry E. Mallen
14 Paul A. Bost
15 *Attorneys for Plaintiff*
16 **SUMMIT ENTERTAINMENT, LLC**

17
JURY DEMAND

18 Summit demands a trial by jury of all issues triable by jury.

19 Respectfully submitted,
20 MANATT, PHELPS & PHILLIPS, LLP

21 Dated: February 8, 2010

22 By: 
23 Jill M. Pietrini
24 Barry E. Mallen
25 Paul A. Bost
26 *Attorneys for Plaintiff*
27 **SUMMIT ENTERTAINMENT, LLC**

28
300054657.3

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

| | |
|---|--|
| I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) SUMMIT ENTERTAINMENT, LLC, a Delaware limited liability company | DEFENDANTS TOPICS ENTERTAINMENT, INC., a Washington corporation; GREG JAMES, an individual; RALPH GALVAN, an individual; CHRIS ABERNATHY, an individual; and DOES 1-10, inclusive |
| (b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) MANATT, PHELPS & PHILLIPS, LLP Jill M. Pietrini (SBN 138335) jpietrini@manatt.com Barry E. Mallen (SBN 120005) bmallen@manatt.com Paul Bost (SBN 261531) pbost@manatt.com 11355 West Olympic Boulevard Los Angeles, CA 90064-1614 Telephone: (310) 312-4000; Facsimile: (310) 312-4224 | Attorneys (If Known) |

| | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|--|----------------------------|---|----------------------------|----------------------------|------------|------------|-----------------------|----------------------------|----------------------------|---|----------------------------|----------------------------|--------------------------|----------------------------|----------------------------|---|----------------------------|----------------------------|---|----------------------------|----------------------------|----------------|----------------------------|----------------------------|
| II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) | III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table> | | PTF | DEF | | PTF | DEF | Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| | PTF | DEF | | PTF | DEF | | | | | | | | | | | | | | | | | | | | |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | | | | | | | | | | | | | | | | | | | | |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | | | | | | | | | | | | | | | | | | | | |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | | | | | | | | | | | | | | | | | | | | |

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Complaint for False Designation of Origin – 15 U.S.C. § 1125(a); Trademark Infringement, Dilution--15 U.S.C. § 1125(c); Cal. Bus. & Prof. Code § 14330; Copyright Infringement; Statutory and Common Law Unfair Competition

VII. NATURE OF SUIT (Place an X in one box only.)

| OTHER STATUTES | CONTRACT | TORTS PERSONAL INJURY | TORTS PERSONAL PROPERTY | PRISONER PETITIONS | LABOR |
|--|---|--|--|---|---|
| <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes | <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 22 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 61 HIA(1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW 405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 |

FOR OFFICE USE ONLY: Case Number: **CV 10-00939**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.