

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

TRADEMARK PROPERTIES, )	
INC., a South Carolina corporation; )	Civil Action No.2:06-CV-2195-CWH
RICHARD C. DAVIS, an individual )	
)	
Plaintiffs, )	
)	
vs. )	
)	
A&E TELEVISION NETWORKS, )	AMENDED COMPLAINT
and MAX WEISSMAN )	(Jury Trial Demanded)
PRODUCTIONS, INC. d/b/a )	(Fraud)
DEPARTURE FILMS )	(Breach of Contract)
)	(Promissory Estoppel)
Defendants. )	(Breach of Fiduciary Duty)
)	(Conversion)
A&E TELEVISION NETWORKS, )	(Misappropriation of Trade Secrets)
)	(Unfair Competition and Unfair
Counterclaim Plaintiff, )	Business Practices and Unfair Trade
)	Protection Act)
vs. )	(Constructive Trust and Accounting)
)	(Preliminary and Permanent Injunction
)	Against all Defendants)
TRADEMARK PROPERTIES, INC.)	
and RICHARD C. DAVIS, )	
)	
Counterclaim Defendants. )	
)	

The Plaintiffs, TRADEMARK PROPERTIES, INC. (“Trademark”) and RICHARD C. DAVIS (“Davis”) (collectively “Plaintiffs”), complaining of Defendants A&E TELEVISION NETWORKS (“A&E”),and Max Weissman Productions, Inc. d/b/a Departure Films (“Departure Films”) ( collectively “Defendants”) allege as follows:

**PARTIES**

1. Plaintiff, Trademark Properties, is a Corporation organized and existing pursuant to the laws of the State of South Carolina, with its principal place of business in Charleston, South Carolina.
2. Plaintiff Richard C. Davis, is an individual residing in Charleston, South Carolina.
3. Plaintiffs are informed and believe that Defendant A&E Television Networks is a partnership with interest held by Hearst Communications, Inc., Disney/ABC International Television, Inc., and NBC-A&E Holding, Inc. and is organized and existing pursuant to the laws of the State of New York, and at all times relevant hereto has conducted business in Charleston County, South Carolina.
4. Plaintiffs are informed and believe that Defendant Max Weissman Production, Inc. is a Corporation organized and existing pursuant to the laws of the State of New York, and at all times relevant hereto was doing business as Departure Films and was conducting business in Charleston, South Carolina.

#### **JURISDICTION AND VENUE**

5. That Jurisdiction and Venue are proper in that the Plaintiff, Trademark Properties, Inc.'s principal place of business is in Charleston County, South Carolina and that the Plaintiff, Richard C. Davis resides in Charleston County, South Carolina and at all times hereinafter mentioned conducted business with the Defendants in Charleston County, South Carolina.

#### **FACTUAL BACKGROUND**

6. This case presents issues of fraud and theft of valuable property rights. Davis is

the creator and owner of the unique concept, format and treatment of a reality based television program which features Davis and certain staff members of Trademark going through the process of locating, acquiring, refurbishing and selling houses. Davis titled his concept and treatment "Worst To First", subsequently renamed "Flip This House"( hereinafter referred to as the Project"). In or around April 2004 Plaintiffs created and produced a digital video pilot version of Plaintiffs' Project, featuring Davis and other staff members of Trademark. Plaintiffs' Project is jointly owned and controlled by Davis and Trademark.

7. In May 2004, Plaintiffs submitted the treatment and DVD pilot episode of Plaintiffs' Project to Defendant A&E. A&E responded enthusiastically to Plaintiffs' Project, and requested a meeting with Davis to discuss an agreement regarding the potential production and exploitation of a television series based on Plaintiffs' Project.
8. Thereafter, in or around June 2004, representatives of A&E met with Davis and expressed their interest in entering into an agreement with Plaintiffs to produce and televise a television series based on Plaintiffs' Project. Davis made it clear to the representatives of A&E that he was only willing to consider an agreement to have Plaintiffs' Project produced and televised by A&E provided that Plaintiffs and A&E would be equal 50/50 owners of the project, and would share equally in all net revenues and proceeds generated from the exploitation of the project. A&E explicitly agreed to those terms and, based on that agreement, Plaintiffs permitted

A&E to retain Defendant Departure Films to produce the episodes of the television series based on Plaintiffs' Project.

9. Thereafter, A&E repeatedly promised to prepare and submit a written agreement to Plaintiffs embodying the terms of the parties' agreement; yet, despite repeated demands by Plaintiffs to A&E for that written agreement, and A&E's repeated assurances that the agreement would be provided to Plaintiffs, A&E ultimately failed to provide Plaintiffs with a written agreement reflecting the terms of their agreement. Instead, A&E defrauded Plaintiffs and misappropriated and stole Plaintiffs' Project for A&E's own use and benefit. In reliance on A&E's agreement that A&E and Plaintiff's would equally share all net revenues and proceeds from exploitation of Plaintiffs' Project, Plaintiffs were induced to permit a first season of 13 episodes of "Flip This House" to be produced by Departure Films for the benefit of A&E, without any written agreement with Plaintiffs and without A&E providing Plaintiffs any compensation.
10. A&E has, in effect, stolen Plaintiffs' valuable concept and format of the television series "Flip This House" from Plaintiffs, and now intends to produce, televise, and exploit a second season of that television series without Plaintiffs' approval, participation, or otherwise providing any compensation to Plaintiffs. Accordingly, Plaintiffs have been defrauded and cheated by Defendants, and Defendants have used and exploited Plaintiffs' valuable concept and format for "Flip This House" without Plaintiffs' approval or authority.

## Partnership Agreement

11. After Davis submitted the treatment and pilot of Plaintiffs' Project to A&E in May 2004, Charles Norlander of A&E contacted Davis and advised him that A&E was interested in potentially producing and televising a television series based on Plaintiffs' Project. On June 14, 2004, Davis met with Norlander and Thomas Moody of A&E and Max Weissman of Departure Films to discuss a potential agreement regarding the production of a television series based on Plaintiffs' Project. At that time, Davis made it clear to Norlander, Moody and Weissman that he was only interested in considering a potential agreement regarding the production of Plaintiffs' Project provided that Plaintiffs and A&E be equal partners in the project, including that: (1) Plaintiffs retain an ownership interest in the project; (2) A&E pay for all production costs of any episodes produced based on the project; (3) Trademark Properties be responsible for locating, acquiring, refurbishing and selling all real estate featured in any episodes produced based on the project; (4) Trademark Properties and its principals be prominently featured in the show, and no episode be produced which does not include them in a lead role; (5) Davis to have creative control over the production and receive a "Created By" credit on any episodes produced; (6) Trademark be reimbursed for any direct expenditures regarding the development and production of any episodes produced, and (7) A&E and Trademark share equally on a 50/50 basis in all revenues and proceeds generated by the sale, distribution and/or exploitation of the show, including without limitation sponsorship revenues, product placement revenues,

ad sales, syndication fees, and video sales all of which is hereinafter referred to as the (“Partnership Agreement”). Norlander and Moody on behalf of A&E agreed to the Partnership Agreement. Norlander and Moody further represented that A&E would prepare a written agreement embodying the terms of the Partnership Agreement.

12. In reliance on the Partnership Agreement, Plaintiffs agree to permit A&E to develop and produce a television series “Flip This House” based on Plaintiffs’ Project. Departure Films was retained by A&E to produce the episodes of “Flip This House” based on Plaintiffs’ Project hereinafter referred to as the (“Series”). Plaintiffs would not have agreed to permit A&E or Departure Films to produce any episodes of “Flip This House” based on Plaintiffs’ Project but for A&E’s acceptance of the terms of the Partnership Agreement.
13. In further reliance on the Partnership Agreement, (a) Trademark proceeded to locate, acquire, refurbish and sell real property, and have its activities filmed by Departure Films for production into episodes of the Series, (b) Davis and other members of the Trademark staff permitted their images and persona to be filmed and televised in the Series, (c) Trademark disclosed confidential proprietary business information, procedures and trade secrets to Defendants, and (d) Plaintiffs expended significant amounts on the development of the Series without reimbursement or compensation from Defendants. Absent the Partnership Agreement, Plaintiffs would not have permitted Plaintiffs’ Project to be used or exploited as the basis of the Series, nor would Davis, or any other staff members

of Trademark have participated in or appeared in the Series, nor would Trademark have disclosed any of its trade secrets featured in the Series, nor would Plaintiffs have expended any amounts on the development of the Series. As a direct and proximate result of Defendants fraud and theft of Plaintiffs' valuable ideas and concept for the Series, Plaintiffs have suffered significant monetary damages. In addition, Plaintiffs have suffered significant damages to their business reputation and operations.

14. Plaintiffs did not learn until on or about March 2006 that A&E intended to repudiate the Partnership Agreement, and instead use and misappropriate Plaintiffs' Project and trade secrets to produce and televise a second season of the Series without Plaintiffs' approval or participation.

### **FIRST CAUSE OF ACTION**

#### **(Fraud Against the Defendant A&E)**

15. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 14 above as though fully set forth herein.
16. As stated hereinabove, to induce Plaintiffs to enter into the Partnership Agreement and participate in and consent to the production of the Series, A&E warranted and represented, among other things, that Plaintiffs and A&E would be equal partners and owners in all results and proceeds generated from the Series, and that A&E would not engage in any acts which would benefit A&E to the exclusion or detriment of Plaintiffs, or otherwise cause any harm or damage to Plaintiffs. A&E further

represented that it would prepare and deliver to Plaintiffs a written agreement consistent with the terms and condition of the Partnership Agreement referenced above.

17. Plaintiffs are informed and believe that A&E misrepresented its intention to treat Plaintiffs as an equal partner or otherwise pay Plaintiffs any portion of the net revenues and proceeds generated from the exploitation of the Series. The true facts are that A&E never intended to treat Plaintiffs as an equal partner with respect to the revenues and proceeds from the exploitation of the Series or to pay Plaintiffs any portion of the net profits generated from the exploitation of the Series. In addition, A&E never intended to prepare or deliver to Plaintiffs a written agreement embodying the terms of the Partnership Agreement as referenced above. Contrary to the representations made by A&E to induce Plaintiffs to enter into the Partnership Agreement and permit A&E, through its designated production company Defendant Departure Films, to produce episodes of the Series based on Plaintiffs' Project, A&E was aware from the inception of its negotiations with Plaintiffs that it would not treat Plaintiffs as an equal partner or otherwise pay Plaintiffs any portion of the net revenues and proceeds generated from the exploitation of the Series.
18. Plaintiffs are informed and believe and based thereon allege that A&E intended to misappropriate and use the valuable ideas and concepts of Plaintiffs' Project to produce the Series, and fraudulently induce Davis and the other staff members of Trademark to appear in the Series for no compensation, to misappropriate and use Trademark's confidential trade secrets, and to retain all results and proceeds from the

exploitation of the series for A&E's own use and benefit. In addition, Plaintiffs are informed and believe and based thereon allege that A&E intended to misappropriate and use the valuable ideas and concepts from Plaintiffs' Project for its own use and benefit by producing a second season of the Series without featuring Davis, the staff of Trademark, or otherwise involving Trademark in the production of the Series.

19. A&E made the aforesaid representations with the intent that Plaintiffs would rely on them and would agree to convey the valuable concepts, format and structure of Plaintiffs' Project to A&E to use to produce and televise the Series, to disclose Trademark's valuable and confidential trade secrets, and to otherwise participate in the production of the Series and to expend considerable times and expense in the production of the Series. Plaintiff reasonably relied on the aforesaid representations in entering into the Partnership Agreement and permitting A&E to use the valuable ideas and concepts of Plaintiffs' Project in producing the Series. Plaintiffs would not have entered into the Partnership Agreement or otherwise permitted A&E to use the valuable rights in and to Plaintiffs' Project had Plaintiffs known the true facts as alleged herein.
20. Plaintiffs are informed and believe and based thereon allege that A&E knew the aforesaid representations were false at the time they were made, and that the false representations were made by A&E with the intent to induce Plaintiffs to enter into the Partnership Agreement, permit A&E to use the valuable ideas and concepts of Plaintiffs' Project to produce the Series, and to induce Davis and other staff of Trademark to appear in the Series.

21. As a direct and proximate result of the aforesaid fraudulent representations by A&E, Plaintiffs have been damaged in an amount that has not yet been fully ascertained but which is believed to be in excess of a million dollars. Amount of the damages, they will seek leave of the court to amend this complaint accordingly.
22. Plaintiffs are informed and believe and based thereon allege that A&E, in doing the things herein alleged, acted willfully, maliciously, oppressively and with full knowledge of the adverse effects of its actions on Plaintiffs, and with willful and deliberate disregard to the consequences to Plaintiffs such as to constitute oppression, fraud or malice, and that such actions were authorized, ratified and adopted by the officers, directors and/or managing agents of A&E. As a direct result of the fraudulent, willful and malicious conduct of A&E, Plaintiffs are entitled to exemplary and punitive damages in an amount to be determined as appropriate by the court and jury.

### **SECOND CAUSE OF ACTION**

#### **(For Breach of Contract Against the Defendant A&E)**

23. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 22 and above as though fully set forth herein.
24. As stated hereinabove, A&E has materially breached the Partnership Agreement by, inter alia, failing to pay Plaintiffs 50% of all net revenues and proceeds from the exploitation of the Series, failing to reimburse Plaintiffs for the production costs and expense incurred by Plaintiffs in connection with the Series, and proceeding to produce and televise a second season of the Series without Plaintiffs' approval or

participation.

25. Plaintiffs have performed all duties and obligations on their part required to be performed by the Partnership Agreement, except to the extent such performance was waived, excused, or prevented by reasons of the acts and omissions of A&E.
26. As a direct and proximate result of the material breaches of the Agreement by A&E, Plaintiffs have been damaged in an amount that has not yet been fully ascertained but which is believed to be in excess of a million dollars.

### **THIRD CAUSE OF ACTION**

#### **(Promissory Estoppel Against Defendant A&E)**

27. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 26 above as though fully set forth herein.
28. Beginning with the meeting in June 2004 between Plaintiffs, and Norlander and Moody on behalf of A&E, and continuing through and including March 2006, A&E promised and assured Plaintiffs that, in consideration for Plaintiffs agreeing to permit Defendants to produce and televise the first season of the Series based on Plaintiffs' Project, Plaintiff would equally share in and receive 50% of all net revenues and proceeds generated from the exploitation of the Series and that no episodes of the Series would be produced absent Plaintiffs approval and participation. In addition, A&E promised and assured Plaintiffs that Plaintiffs would continue to have creative control over the Series, and that A&E would not produce or televise any episode of the Series which did not feature Davis and other staff members of Trademark

prominently in the Series.

29. In so promising and assuring Plaintiffs, A&E knew or should have known that Plaintiffs would be reasonably induced to rely on A&E's promises and assurances and would, among other things, provide their approval to produce episodes of the Series based on Plaintiffs' Project, and otherwise participate and appear in the Series and continue to expend considerable amounts in the production of the Series.
30. Plaintiffs reasonably relied on A&E's promises and assurance, and were thereby induced to provide the aforesaid services and monetary expenditures in connection with the production of the Series.
31. A&E has failed and refused to perform in accordance with its promises and assurances by, among other things, failing and refusing to honor the terms of the Partnership Agreement, including accounting for and paying Plaintiffs 50% of all net revenues and proceeds from the exploitation of the Series, affording Plaintiffs creative control over the production of the Series, and announcing that a second season of the Series will be produced independently by A&E without the participation or involvement of Plaintiffs, or otherwise featuring Davis and the other staff of Trademark.
32. Based on the facts and circumstances alleged hereinabove, including Plaintiffs reasonable and detrimental reliance on A&E's promises, A&E is estopped to deny its obligations under the Partnership Agreement, and is estopped to deny the validity and enforceability of the Partnership Agreement.
33. As a direct and proximate result of the A&E's failure and refusal to perform the

promises and representations made by A&E to induce Plaintiffs to enter into the Partnership Agreement, Plaintiffs have been damaged in an amount that has not yet been fully ascertained but which is believed to be in excess of a million dollars.

#### **FOURTH CAUSE OF ACTION**

##### **(Breach of Fiduciary Duty Against the Defendant A&E)**

34. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 33 above as though fully set forth herein.
35. As alleged above, the Partnership Agreement created a partnership and joint venture relationship between Plaintiffs and A&E, whereby Plaintiffs disclosed valuable and confidential information concerning Plaintiffs' Project to A&E and permitted A&E to produce the Series based on Plaintiffs' Project, in exchange for the Partnership Agreement providing, among other things, that Plaintiffs and A&E would share equally on a 50\50 basis all net revenues and proceeds generated from the exploitation of the Series. By virtue of Plaintiff's rights under the Partnership Agreement, and the fact that Plaintiffs conveyed the valuable concept and ideas of Plaintiffs' Project to A&E in reliance on the Partnership Agreement and Plaintiffs also invested considerable time and money in the development and production of Plaintiffs' Project and the Series based thereon, Plaintiffs and A&E had a joint interest in the successful licensing, marketing, distribution and other exploitation of the Series, including sharing equally in all revenues generated from sponsorships, product placement and advertising connected with the Series. Because of the complete and exclusive control exercised by A&E over the licensing, marketing,

distribution, and other exploitation of the Series, and the obligation of A&E to timely and accurately report and pay over to Plaintiffs 50% of revenues and proceeds generated from the exploitation of the Series pursuant to the Partnership Agreement, A&E placed itself in a position of trust and confidence with regard to Plaintiffs.

36. Plaintiffs relied on the warranties and representations of A&E that it would not take any action to interfere with Plaintiffs rights to receive a 50% percent share of the net revenues and proceeds from the exploitation of the Series, and that A&E would timely and accurately account for all revenues and proceeds generated from the distribution, licensing and/or other exploitation of the Series. Accordingly, A&E owed and continues to owe a fiduciary duty to accurately account for and pay to Plaintiffs 50% of all net revenues and proceeds generated from the distribution, licensing and/or other exploitation of the Series, and to not engage in any act or omission which would harm Plaintiffs in any manner or decrease or diminish Plaintiffs expected benefits under the Partnership Agreement.
37. Plaintiffs are informed and believe and based thereon allege that, by engaging in the conduct herein alleged, A&E has breached its fiduciary duties to Plaintiffs by placing its own interest above those of Plaintiffs, by perpetrating the aforesaid fraud and deceit upon Plaintiffs in misappropriating Plaintiffs' Project for A&E's own use and benefit to the exclusion of Plaintiffs, and by failing and refusing to timely, accurately and fully account for and pay to Plaintiffs all amounts due and owing to Plaintiffs from the exploitation of the Series pursuant to the terms of the Partnership Agreement.

38. As a direct and proximate result of the aforesaid breach of fiduciary duty by A&E, Plaintiffs have been damaged in an amount that has not yet been fully ascertained but which is believed to be in excess of a million dollars.
39. Plaintiff are informed and believe and based thereon allege that A&E, in doing the things herein alleged, acted willfully, maliciously, oppressively and with full knowledge of the adverse effects of its actions on Plaintiff, and with willful and deliberate disregard to the consequences to Plaintiffs such as to constitute oppression, fraud or malice, and that such actions were authorized, ratified and adopted by the officers, directors and/or managing agents of A&E. As a direct result of the fraudulent, willful and malicious conduct of A&E, Plaintiffs are entitled to exemplary and punitive damages in an amount to be determined as appropriate by the court.

### **FIFTH CAUSE OF ACTION**

#### **(Conversion Against the Defendant A&E)**

40. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 39 above as though fully set forth herein.
41. As alleged hereinabove, A&E has improperly and fraudulently withheld and failed to pay all amounts rightfully owed to Plaintiffs pursuant to the Partnership Agreement, and has diverted said amounts to its own use and benefit. As a result of the aforesaid acts and omissions, A&E has deprived Plaintiffs of the use and enjoyment of those funds.

42. Plaintiffs have repeatedly demanded that A&E account for and pay over to Plaintiffs a 50% share of all net revenues and proceeds generated from the distribution, licensing and/or other exploitation of the Series, but A&E has failed and refused to pay Plaintiffs the amounts rightfully due and owing to Plaintiffs pursuant to the terms and conditions of the Partnership Agreement.
43. As a direct and proximate result of the aforesaid unlawful conversion of monies due and owing to Plaintiffs by A&E, Plaintiffs have been damaged in an amount that has not yet been fully ascertained but which is believed to be in excess of a million dollars.
44. Plaintiffs are informed and believe and based thereon allege that A&E, in doing the things herein alleged, acted willfully, maliciously, oppressively and with full knowledge of the adverse effects of its actions on Plaintiffs, and with willful and deliberate disregard to the consequences to Plaintiffs such as to constitute oppression, fraud or malice, and that such actions were authorized, ratified and adopted by the officers, directors and/or managing agents of A&E. As a direct result of the fraudulent, willful and malicious conduct of A&E, Plaintiffs are entitled to exemplary and punitive damages in an amount to be determined as appropriate by the court.

#### **SIXTH CAUSE OF ACTION**

##### **(Misappropriation of Trade Secrets Against All Defendants)**

45. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 44 above

as though fully set forth herein.

46. Trademark has invested significant time, effort and expense to develop, protect and package its means and methods of locating, acquiring, refurbishing and selling real property that is unique and was unknown to the public or competitors of Trademark, and which gave Trademark a competitive advantage in its business operations. Trademark's confidential proprietary business information and trade secrets were developed by Plaintiffs over several years, and included without limitation the strategies, sources, business models, price points and related information for locating, acquiring, refurbishing and selling real property in a manner to maximize the success and profits from that process.
47. Plaintiffs incorporated the aforesaid confidential proprietary business information and trade secrets into Plaintiffs' Project, and otherwise disclosed that confidential proprietary business information and trade secrets to Defendants in confidence with the explicit understanding and agreement by Defendants that Plaintiffs' confidential proprietary business information and trade secrets would only be used and incorporated in the production of the Series with Plaintiffs' approval and provided that Plaintiffs were compensated for the public disclosure and use of that information consistent with the terms and conditions of the Partnership Agreement. Because Defendants wholly failed to comply with the terms and conditions of the Partnership Agreement, Defendants never acquired the rights to use or disclose Trademark's confidential proprietary business information and trade secrets in episodes of the Series.

48. Trademark's confidential proprietary business information and trade secrets is not known by others or competitors of Trademark, and Trademark has made reasonable efforts to insure that its proprietary information remained a secret by not disclosing it to anyone outside of Trademark, or by allowing the information to be used for any purpose other than the business and functions of Trademark. Trademark's confidential and proprietary business information as embodied in Plaintiffs' Project and in the Series is a trade secret which merits legal protection from Defendants misappropriation and use of that information for their own benefit through the continuing production and exploitation of the Series in violation of the Partnership Agreement.
49. Plaintiffs are informed and believe and based thereon alleges that Defendants, and each of them, misappropriated the above-described trade secrets of Trademark by illegally using and incorporating the trade secrets to produce episodes of the Series in violation of the terms of the Partnership Agreement, and without the approval, involvement and participation of Plaintiffs in the continuing episodes of the Series.
50. As a direct and proximate result of the misappropriation of Trademark's trade secrets as alleged herein, Trademark has been damaged in an amount that is not yet fully ascertainable but which is believed to be in excess of a million dollars.
51. Plaintiffs are informed and believe and based thereon allege that A&E, in doing the things herein alleged, acted willfully, maliciously, oppressively and with full knowledge of the adverse effects of its actions on Plaintiffs, and with willful and deliberate disregard to the consequences to Trademark such as to constitute

oppression, fraud or malice, and that such actions were authorized, ratified and adopted by the officers, directors and/or managing agents of A&E. As a direct result of the fraudulent, willful and malicious conduct of A&E, Trademark is entitled to exemplary and punitive damages in an amount to be determined as appropriate by the court.

### **SEVENTH CAUSE OF ACTION**

#### **(Unfair Competition, Unfair Business Practices and Unfair Trade Practices Against All Defendants)**

52. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 51 above as though fully set forth herein.
53. Plaintiffs are informed and believe and based herein allege that Defendants, and each of them, have engaged in unlawful, unfair and fraudulent business practices and/or unfair competition and/or unfair trade practices, and have utilized certain improper, unlawful and tortious means to unjustly enrich themselves, and to cause deliberate injury to Plaintiffs by, among other things, using, misappropriating and exploiting Plaintiffs' valuable ideas and concept as embodied and referenced in Plaintiffs' Project and in the Series for Defendants' own use and benefit, without the approval or participation of Plaintiffs.
54. By engaging in the acts and omissions described herein, Defendants have committed acts of unfair competition and false and misleading business practices and unfair trade practices, all of which said acts and omissions effect the Plaintiffs and the

public as said acts and omissions capable of repetition.

55. As a direct and approximate result of the unfair competition and false and misleading business practices of Defendants, as described herein, Plaintiffs have been damaged in an amount that has not yet been fully ascertained but which is believed to be in excess of a million dollars.

### **EIGHTH CAUSE OF ACTION**

#### **(Constructive Trust and Accounting Against All Defendants)**

56. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 55 above as though fully set forth herein.
57. Plaintiffs are informed and believe and based thereon allege that Defendants, and each of them, have derived and received income and profits from the aforesaid, illegal, unlawful and deceitful and wrongful acts, including, among other things, the proceeds received by Defendants from the licensing, sale, distribution and other exploitation of the Series, together with the advertising, promotional and sponsorship revenues generated therefrom.
58. By reason of the aforesaid illegal, unlawful, deceitful and wrongful acts of Defendants, and each of them, Defendants are involuntary constructive trustees holding the monies derived and received from the misappropriation, use and exploitation of Plaintiffs' valuable ideas and concepts in the creation, development and exploitation of the Series in constructive trust for Plaintiffs, with a duty to account fully therefore, and pay over to Plaintiffs all said amounts.

59. The exact amount of compensation to be paid to Plaintiffs by Defendants, and each of them, is unknown to Plaintiffs. The exact amount cannot be ascertained without a full accounting of all transactions, agreements and licenses entered into by and on behalf of Defendants, and each of them, in connection with the licensing, sale, distribution and other exploitation of the Series.

### **NINTH CAUSE OF ACTION**

#### **(Preliminary and Permanent Injunction Against All Defendants)**

60. Plaintiffs reallege, adopt and incorporate by reference paragraphs 1 through 59 above as though fully set forth herein.
61. Plaintiffs are informed and believe and based thereon allege that unless Defendants, and each of them are enjoined from (1) licensing, distributing and otherwise exploiting the Series, (2) using and incorporating Plaintiffs' valuable ideas and concepts for the Series in the current season of the Series without Plaintiffs' approval and participation, and (3) using and incorporating Trademark's confidential proprietary trade secrets in the current season of the Series without Trademark's approval, Plaintiffs will be irreparably harmed and injured as a direct and proximate result of Defendants' illegal and unlawful acts.
62. Plaintiffs have demanded that Defendants stop their unlawful conduct as described hereinabove, including without limitation ceasing all use and misappropriation of Plaintiffs' valuable ideas and concepts in the Series, and otherwise producing any further episodes of the Series in violation of the Partnership Agreement and without Plaintiffs' explicit authorization and participation. Unless enjoined and restrained

by order of this court, Defendants wrongful and continuing conduct will cause great and irreparable injury to Plaintiffs in that the unauthorized use and exploitation of Plaintiffs' valuable concepts and trade secrets in the Series has effected and will continue to effect Plaintiffs' future endeavors, business operations and opportunities.

63. Plaintiffs have no adequate remedy at law for the injuries currently being suffered and will be suffered if Defendants' conduct is not restrained, and Plaintiffs will be forced to institute a multiplicity of suits to obtain adequate compensation and relief for the injuries suffered by them.
64. Consequently, Plaintiffs respectfully request that the court issue an injunction restraining Defendants from (1) directly or indirectly making any use of Plaintiffs' valuable concept, format and structure in and for the Series, (2) directly or indirectly using or disclosing any of Trademark's trade secrets in the production of the Series and (3) distributing, exhibiting, airing or advertising the Series in its present form.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

**AS TO THE FIRST CAUSE OF ACTION:**

1. General and special damages in excess of a million dollars, in accordance with proof at trial, together with interest thereon at the legal rate;
2. Exemplary and punitive damages in an amount according to proof at the time of trial;

**AS TO THE SECOND CAUSE OF ACTION:**

3. General and special damages in excess of a million dollars in accordance with proof at trial, together with interest thereon at the legal rate;

**AS TO THE THIRD CAUSE OF ACTION:**

4. General and special damages in excess of a million dollars in accordance with proof at trial, together with interest thereon at the legal rate;

**AS TO THE FOURTH CAUSE OF ACTION:**

5. General and special damages in excess of million dollars in accordance with proof at trial, together with interest thereon at the legal rate;
6. Exemplary and punitive damages in an amount according to proof at the time of trial;

**AS TO THE FIFTH CAUSE OF ACTION:**

7. General and special damages in excess of million dollars in accordance with proof at trial, together with interest thereon at the legal rate;
8. Exemplary and punitive damages in an amount according to proof at the time of trial;

**AS TO THE SIXTH CAUSE OF ACTION:**

9. For an accounting and distribution to the Plaintiffs of the full amount of all compensation due and owing to Plaintiffs from the world-wide distribution, sale, licensing and/or other exploitation of the Series, together with interest thereon at the legal rate;
10. Exemplary and punitive damages in an amount according to proof at the time of trial;

**AS TO THE SEVENTH CAUSE OF ACTION:**

11. General, special and treble damages in excess of a million dollars in accordance with proof at trial, together with interest thereon at the legal rate;
12. Exemplary and punitive damages in an amount according to proof at the time of trial;

**AS TO THE EIGHTH CAUSE OF ACTION:**

13. General and special damages in excess of a million dollars in accordance with proof at trial, together with interest thereon at the legal rate;
14. Exemplary and punitive damages in an amount according to proof at the time of trial;

**AS TO THE NINTH CAUSE OF ACTION:**

15. For a permanent preliminary injunction as requested herein;

**AS TO ALL CAUSES OF ACTION:**

16. For all costs of suit incurred herein;
17. For reasonable attorneys' fees as may be provided by law;
18. For interest as may be provided by law; and
19. For such other and further relief as the Court may deem to be just and appropriate.

**CISA & DODDS, LLP**

s/Frank M. Cisa  
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February 8, 2007  
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