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CAUSE NO. 99-13839-A

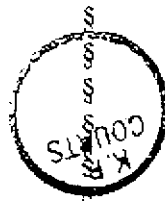
FILED
COUNTY CLERK

UNIVERSAL IMAGE INC.,
d/b/a CHALKBOARDTALK.COM,

Plaintiff,

YAHOO, INC., BROADCAST.COM,
INC., MARK CUBAN, Individually,
and TODD WAGNER, Individually,

Defendants.



IN THE COUNTY COURT

APR 18 PM 3:23
DALLAS COUNTY, AT LAW
BY _____
DEPUTY

AT LAW NO. 1

DALLAS COUNTY, TEXAS

**PLAINTIFF'S SECOND AMENDED VERIFIED ORIGINAL PETITION,
APPLICATION FOR TEMPORARY RESTRAINING ORDER
AND TEMPORARY INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Universal Image, Inc. d/b/a Chalkboardtalk.com, complaining of the acts of Yahoo, Inc., Broadcast.com, Inc., Mark Cuban, Individually and Todd Wagner, Individually, and for cause would respectfully show unto this Court, as follows:

I.

DISCOVERY CONTROL PLAN

1. This matter is subject to discovery level 2 pursuant to Texas Rule of Civil Procedure 190.3.

II.

PARTIES

2. Plaintiff Universal Image, Inc. d/b/a Chalkboard:talk.com (hereinafter, "Universal") is a Texas corporation with its principal place of business in Dallas County, Texas.

3. Defendant Yahoo, Inc. (hereinafter, "Yahoo") is a Delaware corporation doing business in Dallas County, Texas, and has answered and appeared herein.

4. Defendant Broadcast.com Inc. (hereinafter, "Broadcast") is a Delaware corporation doing business in Dallas County, Texas, and has answered and appeared herein.

5. Defendant Mark Cuban (hereinafter, "Cuban") is an individual residing in Dallas County, Texas and has answered and appeared herein.

6. Defendant Todd Wagner (hereinafter, "Wagner") is an individual residing in Dallas County, Texas and has answered and appeared herein.

III.

JURISDICTION AND VENUE

7. The amounts in controversy exceed the minimum jurisdictional limits of this Court. Venue is proper in Dallas County, Texas pursuant to Chapter 15 of the Texas Civil Practices and Remedies Code.

IV.

FACTUAL BACKGROUND

A. Introduction

8. On or about March 31, 1999, Broadcast and Yahoo announced a highly publicized and much celebrated transaction, wherein Yahoo acquired Broadcast for a total acquisition price of \$5.7 billion dollars. Amidst the public fanfare, Yahoo advised the public that as a result of its acquisition of Broadcast: "We plan to deliver an even richer Web experience to our users worldwide."¹ However, Yahoo's acquisition of Broadcast was based on a fraud - a fraud on the public and a fraud on Universal - for a substantial portion of the assets and value of Broadcast was fraudulently obtained and unlawfully converted from Universal.

9. At the time of the acquisition, Broadcast was under the contractual obligation to provide Universal with extremely valuable registration and address information and to provide Universal with key "links" on Broadcast's web page. The registration information (hereinafter "registration information") has been collected on a video registration form, and has in various iterations included, at various times, e-mail addresses, passwords, users names, and user street addresses. Address information (hereinafter "addresses" or "address information") includes various categories of data storage places where interrelated data may be maintained, different flavors or products within a technology category, the depositories to house the meta data, and all places of data storage, including, but not limited to, filing cabinets; policy and procedures manuals; microfiche;

¹ CNET News, July 20, 1999.

records management boxes; scanned documents; non-database files on mainframes; database files; client/server databases; PC files, including application-specific databases; spreadsheets and PC databases; laptops; palmtops; hand-held computers with sales office automation; software package files such as ERP, data warehouse, operational data stores, data marts and multidimensional databases; data mining databases; CRM; Internet with HTML, SGML and XML; intranet; e-commerce databases; knowledge bases; object bases; expert system shells and rules engines; third-party or external online information sources. The registration and address information and this "virtual real estate" are extremely valuable in the World Wide Web internet industry. "Data" hereinafter should be taken to mean distinct pieces of information usually formatted in a special way, existing in any electronic form, whether as numbers or texts on pieces of paper, as bits or bytes stored in electronic memory. "Meta data" hereinafter should be taken to mean data about data, that is, descriptions of how and when and by whom a particular set of data was collected, and how the data is formatted. In fact, as evidence of same, Yahoo's president, Jeffrey Mallet, has stated publicly that Yahoo's "single greatest asset" is the wealth of data it gathers on its users.² As a result of the acquisition, Yahoo assumed this contractual obligation of Broadcast.

10. Yahoo and Broadcast have refused to honor their contractual commitments to Universal. Moreover, Yahoo and Broadcast have negligently and maliciously published a "Privacy Policy" and "Disclaimer" falsely stating to their users that, among other things, no registration

² Forbes, November 29, 1999, page 188.

information shall be distributed without the user's consent. This Privacy Policy and Disclaimer contradict and violate the Contract and transactions between Universal and Broadcast.

11. By this suit, Universal seeks a temporary restraining order, temporary injunction and permanent injunction against Broadcast and Yahoo, prohibiting them from displaying the Privacy Policy and Disclaimer and prohibiting them from altering Universal's product or using Universal's product in any way inconsistent with the Contract between Universal and Broadcast. Universal further seeks a mandatory injunction ordering Broadcast and Yahoo to comply with their contractual obligations. Universal further requests this Court appoint a receiver to take control of all registration information and address information subject to the Contract in question. Universal further seeks a judgment for specific performance, ordering Broadcast and Yahoo to comply fully with the Contract in question. Universal further seeks judgment for all damages suffered as a result of the Defendants' breach of contract, tortious interference, fraud and conversion.

B. The Contract

12. Universal is a World Wide Web "internet company" that, among other things, provides "content development and acquisition." That is, Universal acquires rights to videos and with Yahoo uses a process known as "streaming" whereby the video content is digitalized into a format that may be viewed on a computer over the World Wide Web internet. "Streaming" hereinafter shall be taken to mean a technique for transferring data such that it can be processed as a steady and continuous stream.

13. Broadcast is a company which provides video and audio products over the World Wide Web internet. Mark Cuban and Todd Wagner are co-founders of Broadcast. In 1998, Cuban and Wagner entered into the Contract with Universal whereby Universal would provide Broadcast with videos and the Chalkboard.com brand. Broadcast lacked significant video content and Universal had video product. Broadcast undertook to market and stream its products over the World Wide Web internet.

14. On November 13, 1998, Universal and Broadcast entered into a "Content License Agreement" (the "Contract"), a true and correct copy of which is attached hereto as Exhibit "A." The Contract was drafted by Broadcast by and through its general counsel, Belinda Johnson.

15. In the Contract, Universal agreed to provide Broadcast with video programming to transmit over the World Wide Web internet.³ In return, Broadcast agreed to provide Universal with registration and address information provided by those who accessed the video programming.⁴ This address information of internet users is an extremely valuable and marketable commodity, as it provides information company growth, business planning, expansion, targeted marketing and sales of products and services. In fact, Yahoo's president, Jeffrey Mallet has stated publicly that Yahoo's "single greatest asset" is the wealth of data it gathers on its users.

³ Contract, ¶ 1(a).

⁴ Contract, ¶ 1(c).

16. In addition, Broadcast also agreed to include an easily accessible "link" to Universal's internet websites on all of Broadcast's web pages.⁵ This "virtual real estate" is also extremely valuable, as it directs targeted users (and, therefore, likely consumers) to particular websites through an immediate connection or "link."

17. In addition, Broadcast agreed to obtain Universal's approval before issuing press releases.⁶ The Contract calls for the issuance of joint press releases with respect to the products and services, and the resulting market exposure Universal would receive was likewise extremely valuable.

18. Universal would not have entered into the Contract, but for Broadcast's commitment to: 1) provide Universal all of the registration and address information; 2) provide Universal with "virtual real estate"; and, 3) include Universal in Broadcast's press releases. The Contract was also of significant value to Broadcast because it was attempting to enter the e-commerce industry as a provider of audio and video products and services, but did not have sufficient video programming.

C. Universal's Performance Under the Contract

19. After executing the Contract, Universal immediately and diligently began to perform under the Contract. At the time of the execution of the Contract, Universal had rights to hundreds

⁵ Contract, ¶ 1(f).

⁶ Contract, ¶ 5(b).

of videos, including a wide-range and variety of topics. Moreover, Universal had the necessary contracts to acquire significant numbers of additional videos, as contemplated in the Contract.⁷

20. Immediately after execution of the Contract, Universal and its principal, Kimball Norman, began adding Universal's videos to Broadcast's website with Broadcast. Norman's contribution included participation in the construction of Broadcast's e-commerce system and participation in Yahoo Broadcast editorial style and database construction.

D. Broadcast's Performance Under the Contract before the Merger

21. In late 1998 and the early months of 1999, before the greed associated with the Yahoo merger set in, Broadcast and its principals, Cuban and Wagner, were delighted with Universal's performance under the Contract and pleased with the valuable video products Broadcast was acquiring. Broadcast prominently included Universal's link on its website, thus giving Universal the "virtual real estate" for which it bargained in the Contract.

E. The Merger Between Broadcast and Yahoo

22. On or about March 31, 1999, Yahoo and Broadcast announced to the public that Yahoo intended to merge by way of Yahoo's acquisition of Broadcast. The acquisition was announced as final on July 20, 1999. The total acquisition price was \$5.7 billion. The acquisition created an independent "Yahoo Broadcast Services" unit and contemplated for the Broadcast

⁷ Contract, ¶ 5(b).

website to be the "central aggregation site where users can access an array of audio and video programming on the Web."⁸

23. Upon information and belief, the acquisition of Broadcast by Yahoo included Broadcast's turning over to Yahoo all of the registration and address information collected from users who viewed Universal's videos. Pursuant to the Contract, Universal is the exclusive owner of all address information collected pursuant thereto, and Broadcast had no right, entitlement, or privilege to offer, sell, or include said registration and address information in any sale of Yahoo.

24. Upon information and belief, Broadcast and Yahoo failed to disclose the existence of the Contract in their required disclosures including their filings with the Securities Exchange Commission.

25. As a result of the acquisition, Yahoo is now responsible to perform Broadcast's duties under the Contract.

F. The Conduct of Broadcast, Cuban and Wagner During the Merger

26. With newfound wealth from the Yahoo acquisition imminent, Broadcast and its principals, Cuban and Wagner, changed their attitude towards Universal. While once delighted with the products and services provided by Universal, Broadcast and its principals soon began to resent Universal as it became apparent that Universal had rights to a substantial portion of the assets Yahoo would acquire. Rather than act honorably towards Universal and respect Universal's rights under the Contract, Broadcast, Cuban and Wagner chose to ignore Universal and the Contract.

⁸ CNET News, July 20, 1999.

27. In March, 1999, Broadcast caused Universal and its principal Kimball Norman to be ejected from Broadcast's premises. Ultimately, the assets of Universal were intentionally and knowingly co-mingled and included with Broadcast's assets acquired by Yahoo, for which Universal received nothing. Cuban and Wagner, however, protected their interests well. As of July, 1999, Cuban's net worth resulting from the Yahoo merger was estimated at \$1.1 billion and Wagner's net worth was estimated at \$500 million.

G. The Post-Merger Actions of Broadcast and Yahoo

28. Since the acquisition, Yahoo and Broadcast, while reluctantly conceding Universal's rights under the Contract, have employed every possible technique to avoid complying with the Contract.

29. Despite Universal's unconditional right to all of the registration and address information, Yahoo and Broadcast have included an "election" in the website whereby users elect whether to provide their address information to Universal. Notwithstanding this impediment, Yahoo and Broadcast have still provided significant quantities of said data to Universal, though significantly less than what is required by the Contract.

30. Upon information and belief, the above data represent but a fraction of what Universal is entitled to receive under the Contract. Moreover, the data provided changes over time, with Universal being provided increasingly less valuable and less evidence data. Not until October 1999, did Universal learn that Broadcast had altered and impoverished the data, and had fraudulently concealed that fact from Universal.

31. Broadcast and Yahoo have also altered the design of Broadcast's website and its registration requirements in breach of the Contract: Universal is now allowed access only to registration information for users accessing Chalkboardtalk.com content, when Universal previously was entitled to registration and address information for all video users at Broadcast's websites. Further, Broadcast and Yahoo have deliberately and unfairly set additional re-registration obstacles for repeat Chalkboardtalk.com users, to the detriment of Universal.

32. Yahoo and Broadcast have further removed disclaimers and other information from the video without right or permission from Universal. More perniciously, Yahoo and Broadcast now claim authorship in all or virtually all the video titles supplied by Universal.

33. Yahoo and Broadcast have removed from the website a significant number of videos chosen by Broadcast and supplied by Universal with such removal constituting a violation of the Contract. Yahoo and Broadcast have further renamed many of the videos without permission or approval from Universal.

34. Yahoo and Broadcast have also granted access to the videos to Microsoft Network for display on its website. This access was likewise without permission or approval from Universal.

B. The "Privacy Policy" and "Disclaimer"

35. Yahoo and Broadcast have announced a Privacy Policy to its users, although one that is on its face contradictory and fraudulent, true and correct copies of which are attached hereto as Exhibits "B" and "C". Under this Privacy Policy, Yahoo and Broadcast represent to their users that

registration and address information is not disseminated by Yahoo or Broadcast, or is disseminated only to certain identified parties.

36. This Privacy Policy is fraudulent and misleading, as it leads previous users and registrants to believe that their submission of information is also protected by the Privacy Policy, when it is not so protected.

37. The Privacy Policy and Disclaimer were announced and instituted by Yahoo and Broadcast without notice to, approval of, or consent of Universal, yet they falsely indicate to registrants that Universal is and has been bound by these rules at all relevant times.

38. The Privacy Policy states to Broadcast users that "[w]e will notify you at the time of data collection and transfer if your data will be shared with a third party and you will always have the option of not permitting the transfer."⁹ This statement is fraudulent and deceptive to users because it falsely indicates that users who registered at any time may block Universal's access to information, and because it falsely indicates that a user may access programming provided by the Universal without allowing Universal access to registration and address information.

39. The fraudulent, misleading, or deceptive statements in the Privacy Policy and Disclaimer subject Universal to potential lawsuits from Yahoo and Broadcast's estimated 80 million users per month for fraud, conspiracy, conversion, deceptive trade practices and other common law and statutory causes of actions. Furthermore, current users have potential lawsuits against Universal

⁹ Privacy Policy, ¶ 5(b).

if they refuse to grant the Universal access to their registration and address information and are denied access to Universal's programming.

40. As applied to current or future registrants, the Privacy Policy and Disclaimer constitute a breach of the agreement between Universal and Broadcast, as they purport to allow registrants access to Universal's programming without providing Universal with all registration and address information.

V.

CAUSES OF ACTION

A. COUNT ONE: Breach of Contract – Broadcast

41. Universal incorporates all of the foregoing statements and allegations of this Complaint by reference as if expressly set forth in full.

42. The Contract between Universal and Broadcast was existing and valid, and obligated Broadcast to provide registration and address information to Universal, and to include advertisements and links to Universal's websites on Broadcast's websites.

43. Universal performed its duties and all conditions precedent to Broadcast's performance under the Contract.

44. Broadcast failed to perform its duties under the Contract by failing to provide address information to Universal, failing to include Universal's links and advertisements on Broadcast's websites, by selling, transferring, or otherwise providing to Yahoo and/or other persons or entities

the address information belonging to Universal under the Contract, and by issuing numerous press releases without notice to Universal or Universal's approval or consent.

45. As a direct and proximate result of Broadcast's breach of Contract, Universal has sustained damages including, without limitation, diminished value of property, lost income, capital and profits, professional fees, expenses and liabilities, and other damages in an amount not less than \$1,000,000,000 or One Billion Dollars.

WHEREFORE, Universal demands judgment against Defendant Broadcast on its First Claim for Relief for all direct, incidental and consequential damages suffered by Universal as a result of the breaches of Contract, together with interest, costs, attorney's fees and such other and further relief as this Honorable Court deems just and proper under the circumstances.

B. COUNT TWO: Breach of Contract - Yahoo

46. Universal reincorporates the foregoing statements and allegations of this Complaint as if expressly rewritten herein.

47. As a result of an agreement between Yahoo and Broadcast, Yahoo is the delegatee and successor to Broadcast's obligations and liabilities under the Contract between Broadcast and Universal.

48. As Broadcast's successor, Yahoo is liable for all breaches of Contract committed by Broadcast prior to, during, and resulting from Broadcast's agreement with Yahoo.

49. As Broadcast's delegatee, Yahoo is obligated to perform Broadcast's duties under the Contract between Broadcast and Universal.

50. Universal fully performed its duties and all conditions precedent to Yahoo's performance under the Contract.

51. Yahoo failed to perform its duties under the Contract by failing to provide registration and address information to Universal, failing to include Universal's links and advertisements on Broadcast's websites, by selling, transferring, or otherwise providing to itself and/or other persons or entities the address information belonging to Universal under the Contract, and by issuing numerous press releases without Universal's notice or approval.

52. As a direct and proximate result of Yahoo's breach of Contract, Universal has sustained damages including, without limitation, diminished value of property, lost income, capital and profits, professional fees, expenses and liabilities, and other damages in an amount not less than \$1,000,000,000 or One Billion Dollars.

WHEREFORE, Universal demands judgment against Defendant Yahoo on its Second Claim for Relief for all direct, incidental and consequential damages suffered by Universal as a result of the breaches of Contract, together with interest, costs, attorney's fees and such other and further relief as this Honorable Court deems just and proper under the circumstances.

C. COUNT THREE: Tortious Interference with Contract – Yahoo

53. Universal reincorporates the foregoing statements and allegations of this Complaint as if expressly rewritten herein.

54. The Contract between Universal and Broadcast was existing and valid, and obligated Broadcast to provide registration and address information to Universal, and to include advertisements and links to Universal's websites on Broadcast's websites.

55. Yahoo entered into an agreement with Broadcast wherein Broadcast would breach its Contract with Universal by failing to provide registration address information, advertising, and website links to Universal, and would instead provide address information, advertising, and website links to Yahoo or others.

56. Yahoo willfully and intentionally induced Broadcast to breach its Contract with Universal in order to enter into the agreement between Yahoo and Broadcast.

57. As a direct and proximate result of Yahoo's tortious interference with Contract, Universal has sustained damages including, without limitation, diminished value of property, lost income, capital and profits, professional fees, expenses and liabilities, and other damages in an amount not less than \$1,000,000,000 or One Billion Dollars.

WHEREFORE, Universal demands judgment against Defendant Yahoo on its Third Claim for Relief for all direct, incidental and consequential damages suffered by Universal as a result of the tortious interference with Contract, together with interest, costs, attorney's fees and such other and further relief as this Honorable Court deems just and proper under the circumstances.

D. COUNT FOUR: CONVERSION – All Defendants

58. Universal reincorporates the foregoing statements and allegations of this Complaint as if expressly rewritten herein.

59. Universal is the legal owner of the address information referred to in paragraph 1(c) of the Contract between Universal and Broadcast, and is entitled to possession of that information.

60. Broadcast, and/or Mark Cuban and/or Todd Wagner, have taken control of Universal's property and have wrongfully exercised that control in a manner inconsistent with Universal's ownership, and to the exclusion of Universal's rights in the property, specifically by depriving the Universal of the property and instead using the property for their own gain and providing the property to Yahoo and/or others.

61. Yahoo has taken control of Universal's property and has wrongfully exercised that control in a manner inconsistent with Universal's ownership, and to the exclusion of Universal's rights in the property, specifically by depriving the Universal of the property and instead using the property for its own gain and providing the property to others.

62. Universal has demanded that Broadcast, through its counsel and otherwise, as spokesman and agent of all Defendants, return the property wrongfully taken and cease and desist from further taking of Universal's property in the future, to which Defendants have refused.

63. As a direct and proximate result of Defendants' conversion of the property, Universal has sustained damages including, without limitation, diminished value of property, lost income, capital and profits, professional fees, expenses and liabilities, and other damages in an amount not less than \$1,000,000,000 or One Billion Dollars.

WHEREFORE, Universal demands judgment against all Defendants on its Fourth Claim for Relief for all direct, incidental and consequential damages suffered by Universal as a result of the

conversion, together with interest, costs, attorney's fees and such other and further relief as this Honorable Court deems just and proper under the circumstances.

E. COUNT FIVE: Trespass to Personal Property – All Defendants

64. Universal reincorporates the foregoing statements and allegations of this Complaint as if expressly rewritten herein.

65. Universal is the legal owner of the address information referred to in paragraph 1(c) of the Contract between Universal and Broadcast, and is entitled to possession of that information.

66. Broadcast, and/or Mark Cuban and/or Todd Wagner, have taken control of Universal's property and has wrongfully exercised that control in a manner inconsistent with Universal's ownership, and to the exclusion of Universal's rights in the property, specifically by depriving the Universal of the property and instead using the property for its own gain and providing the property to Yahoo and/or others. As a result of these acts, the value of the property to Universal is significantly if not completely diminished.

67. Yahoo has taken control of Universal's property and has wrongfully exercised that control in a manner inconsistent with Universal's ownership, and to the exclusion of Universal's rights in the property, specifically by depriving the Universal of the property and instead using the property for its own gain and providing the property to others. As a result of these acts, the value of the property to Universal is significantly or completely diminished.

68. As a direct and proximate result of Defendants' trespass to Universal's personal property, Universal has sustained damages including, without limitation, diminished value of

property, lost income, capital and profits, professional fees, expenses and liabilities, and other damages in an amount not less than \$1,000,000,000 or One Billion Dollars.

WHEREFORE, Universal demands judgment against all Defendants on its Fifth Claim for Relief for all direct, incidental and consequential damages suffered by Universal as a result of the trespass to personal property, together with interest, costs, attorney's fees and such other and further relief as this Honorable Court deems just and proper under the circumstances.

F. COUNT SIX: Fraud – Broadcast, Mark Cuban, Todd Wagner

69. Universal reincorporates the foregoing statements and allegations of this Complaint as if expressly rewritten herein.

70. Defendants Broadcast, Mark Cuban, and Todd Wagner induced the Universal to make the promises of performance contained in the Contract.

71. Broadcast, through Cuban and Wagner, made reciprocal promises of performance in the agreement dated November 13, 1998.

72. Universal rendered its promised performance to Broadcast in reliance on Cuban and Wagner's assertion of Broadcast's reciprocal promises in the agreement dated November 13, 1998.

73. Broadcast's, Cuban's, and Wagner's representations of promised performance to Universal were material in that they represented the basis of the agreement between Universal and Broadcast, and were false and illusory, as Broadcast, Cuban, and Wagner had no intention of carrying out the promises at the time they made them, instead intending to rely on the disclaimer and limitation of remedy clauses to deny all promises made and damages owed to Universal.

74. Universal would not have entered into the agreement or rendered the promised performance if it had known that Broadcast, Cuban, and Wagner at all times intended to deny Broadcast's obligations under the agreement.

75. As a direct and proximate result of Defendants' fraud, Universal has sustained damages including, without limitation, diminished value of property, lost income, capital and profits, professional fees, expenses and liabilities, and other damages in an amount not less than \$1,000,000,000 or One Billion Dollars.

76. Broadcast's, Cuban's, and Wagner's conduct constitutes an intentional or reckless disregard of Universal's rights, entitling Universal to an award of punitive damages of One Billion times 3 or \$3,000,000,000 or Three Billion Dollars.

WHEREFORE, Universal demands judgment against Defendants Broadcast, Mark Cuban, and Todd Wagner on its Sixth Claim for Relief for all direct, incidental and consequential damages suffered by Universal as a result of the fraud, together with punitive damages, interest, costs, attorney's fees and such other and further relief as this Honorable Court deems just and proper under the circumstances.

G. COUNT SEVEN: Civil Theft – All Defendants

77. Universal reincorporates the foregoing statements and allegations of this Complaint as if expressly rewritten herein.

78. Broadcast, Cuban, and Wagner unlawfully obtained goods and services from Universal, in violation of Texas Civil Practice & Remedies Code §§ 134.001 *et seq.*, by fraudulently inducing the Universal to enter the Contract, and to render performance thereon.

79. Yahoo unlawfully received goods and services from Universal and Broadcast, knowing that those goods and services had unlawfully been obtained from Universal.

80. Defendants' fraudulent appropriation of Universal's goods and services constitutes theft under Texas Penal Code §§ 31.03 through 31.05.

81. As a direct and proximate result of Defendants' theft, Universal has sustained damages including, without limitation, diminished value of property, lost income, capital and profits, professional fees, expenses and liabilities, and other damages of One Billion times 3 or \$3,000,000,000 or Three Billion Dollars.

82. Defendants' conduct constitutes an intentional or reckless disregard of Universal's rights, entitling Universal to an award of One Billion times 3 or \$3,000,000,000 or Three Billion Dollars.

WHEREFORE, Universal demands judgment against all Defendants on its Seventh Claim for Relief for all direct, incidental and consequential damages suffered by Universal as a result of the theft, together with punitive damages, statutory relief pursuant to Texas Civil Practice & Remedies Code § 134.005, interest, costs, attorney's fees and such other and further relief as this Honorable Court deems just and proper under the circumstances.

H. COUNT EIGHT: Quantum Meruit – all Defendants

83. Universal reincorporates the foregoing statements and allegations of this Complaint as if expressly rewritten herein.

84. Universal provided valuable goods and services to all Defendants.

85. All Defendants accepted the goods and services provided by Universal, and used, enjoyed, and profited from them.

86. All Defendants were on notice that Universal fully expected compensation in return for its goods and services, as Universal attempted to enter into an enforceable agreement with Broadcast, Cuban, and Wagner, which agreement was fraudulent and therefore void, voidable, or otherwise unenforceable.

87. All Defendants will be unjustly enriched if Universal is not allowed to recover for its valuable goods and services rendered.

88. As a direct and proximate result of Defendants' failure to pay for valuable goods and services rendered, Universal has sustained damages including, without limitation, diminished value of property, lost income, capital and profits, professional fees, expenses and liabilities, and other damages of One Billion times 3 or \$3,000,000,000 or Three Billion Dollars.

89. Defendants' conduct constitutes an intentional or reckless disregard of Universal's rights, entitling Universal to an award of One Billion times 3 or \$3,000,000,000 or Three Billion Dollars.

WHEREFORE, Universal demands judgment against all Defendants on its Eighth Claim for Relief for all direct, incidental and consequential damages suffered by Universal as a result of the

Defendants failure to pay for goods and services rendered, together with punitive damages, interest, costs, attorney's fees and such other and further relief as this Honorable Court deems just and proper under the circumstances.

I. COUNT NINE: Equitable Relief Through Specific Performance

90. Universal reincorporates the foregoing statement and allegations of this Complaint as if expressly rewritten herein.

91. Universal is the legal owner of the address information referred to in paragraph 1(c) of the Contract between Universal and Broadcast, and is entitled to possession of that information.

92. Broadcast, and/or Mark Cuban and/or Todd Wagner, has taken control of Universal's property and has wrongfully exercised that control in a manner inconsistent with Universal's ownership, and to the exclusion of Universal's rights in the property, specifically by depriving the Universal of the property and instead using the property for its own gain and providing the property to Yahoo and/or others.

93. Yahoo has taken control of Universal's property and has wrongfully exercised that control in a manner inconsistent with Universal's ownership, and to the exclusion of Universal's rights in the property, specifically by depriving the Universal of the property and instead using the property for its own gain and providing the property to others.

94. The property taken in violation of Universal's rights, both legal and equitable, includes data gathered from users, from registration information and from address information - including cookies, derivative information from merged data bases, and the data itself in all forms,

iterations, and uses – and is time sensitive and proprietary. (“Cookie” shall be deemed hereafter to mean tokens that are attached to a user or program and change depending on the areas entered by the user or program.) The Defendants have failed to return or return timely this information to Universal and further have conveyed such property and its derivative forms without right to third parties.

95. Such property is unique and irreplaceable.

WHEREFORE, Universal demands specific performance of the Contract, and the immediate return in all forms and intentions of all data related to, derived from or arising from Broadcast.com’s registration statements and address information gathered after November 13, 1998.

J. **COUNT TEN: Declaratory Judgment**

96. Universal reincorporates the foregoing statements and allegations of this Complaint as if expressly rewritten herein.

97. Universal entered into an enforceable Contract with Broadcast, the terms of which were drafted by Broadcast or its attorneys.

98. The Contract between Universal and Broadcast contains paragraphs 5(e) and 5(f), which purport to disclaim any and all warranties made by Broadcast, and purport to disclaim or limit Broadcast’s liability for damages caused by its breach of the agreement.

99. To the extent such terms are relevant to the claims raised in this Complaint, those terms are unenforceable against the Universal because they are overbroad and would render Broadcast’s obligations under the Contract illusory, and an instrument of fraud.

WHEREFORE, Universal demands judgment against all Defendants on its Ninth Claim for Relief for a declaration that the disclaimers of warranty and limitations of damages claimed in the Contract between Universal and Broadcast are void and unenforceable, together with interest, costs, attorney's fees and such other and further relief as this Honorable Court deems just and proper under the circumstances.

K. COUNT ELEVEN: Injunctive Relief – All Defendants

100. Universal reincorporates the foregoing statements and allegations of this Complaint as if expressly rewritten herein.

101. Defendants' stated Privacy Policy and Disclaimer are fraudulent, misleading, or deceptive to internet users seeking to access video programming offered by Yahoo, Broadcast, and Universal.

102. The Privacy Policy and Disclaimer falsely state or indicate that information has not been disclosed to Universal in the past, and will not be disclosed to Universal without the user's permission, and that the user may deny Universal access to registration and address information while still gaining access Universal's video programming. The Privacy Policy and Disclaimer also indicate or imply that the Universal has agreed to, accepted, and are and have been in compliance with all of its terms for the duration of its association with Broadcast and Yahoo.

103. Defendants' compliance with their stated Privacy Policy and Disclaimer require them to breach their contractual obligations to the Universal, as Defendants cannot allow access to users

who do not provide registration and address information to the Universal, and because the Universal is entitled to registration information from all video users on Broadcast's websites.

104. As a direct and proximate result of Defendants' statement of a fraudulent, misleading, deceptive, Privacy Policy and Disclaimer that cannot possibly be complied with by either Universal or Defendants, the Universal is subject to liability for fraud, conversion, breach of Contract, invasion of privacy, and other causes of action from a user base estimated by Defendants to be 80 million users per month.

WHEREFORE, Universal demands judgment against Defendants on its Tenth Claim for Relief for injunctive relief as follows:

- a) for an Order prohibiting Defendants from implementing their stated Privacy Policy and Disclaimer;
- b) for an Order requiring Defendants to alert all users and registrants, through direct mail where address information is available and through prominent announcement on all of their websites, that Defendants' Privacy Policy and Disclaimer are retracted and are of no force and effect;
- c) for an Order requiring Defendants to alert all users and registrants, through direct mail where address information is available and through prominent announcement on all of their websites, that representations in Defendants' Privacy Policy and Disclaimer were false, misleading, unenforceable, impossible to comply with and

fraudulent as to users, and that Defendants are solely responsible for any damages or injury to users, as a result of their reliance on the Privacy Policy and Disclaimer.

d) together with interest, costs, attorney's fees and such other and further relief as this Honorable Court deems just and proper under the circumstances.

L. COUNT TWELVE: Temporary Injunction

105. Universal reincorporates the foregoing statements and allegations of this Complaint as if expressly rewritten herein.

106. The registration and address information at issue in this case is an extremely valuable marketing and advertising tool; however, it is also consumable property, and its sale, transfer, disclosure, and use rapidly causes its value to diminish to the point of worthlessness.

107. Because the registration and address information are only of value if they are not sold, transferred, used, or disclosed, and because the property is worthless to the Universal if it is disclosed prior to Universal's assuming control over it, the Universal's property interests will be irreparably harmed if the Defendants are not enjoined from selling, transferring, using, or disclosing the Universal's property until this case is resolved.

108. The Contract between Universal and Broadcast plainly and unambiguously gives ownership of this property to Universal, thus there is a great likelihood that Universal will succeed on its claims at trial.

109. The Privacy Policy and Disclaimer falsely state or indicate that information has not been disclosed to Universal in the past, and will not be disclosed to Universal without the user's

permission, and that the user may deny Universal access to registration information while still gaining access Universal's video programming. The Privacy Policy and Disclaimer also indicate or imply that the Universal has agreed to, accepted, and is and has been in compliance with all of its terms for the duration of its association with Broadcast and Yahoo.

110. Defendants' compliance with their stated Privacy Policy and Disclaimer require them to breach their contractual obligations to the Universal, as Defendants cannot allow access to users who do not provide registration and address information to the Universal, and because the Universal is entitled to registration and address information from all video users on Broadcast's websites.

111. As a direct and proximate result of Defendants' statement of a fraudulent, misleading, deceptive, Privacy Policy that cannot possibly be complied with by either Universal or Defendants, the Universal is subject to liability for fraud, conversion, breach of Contract, invasion of privacy, and other causes of action from a user base estimated by Defendants to be 80 million users per month.

WHEREFORE, Universal demands judgment against all Defendants on its Eleventh Claim for Relief for a temporary injunction granting the following relief:

- a) for an Order prohibiting Defendants from selling, transferring, using, or disclosing the registration and address information that is the subject of the Contract between Universal and Broadcast, until such time as this suit is resolved;
- b) for an Order prohibiting Defendants from implementing their stated Privacy Policy and Disclaimer until such time as this suit is resolved.

- c) for an Order requiring Defendants to alert all users and registrants, through direct mail where address information is available and through prominent announcement on all of their websites, that Defendants' Privacy Policy and Disclaimer are retracted and cannot be implemented until the issues raised by this suit are resolved;
- d) for an Order requiring Defendants to alert all users and registrants, through direct mail where registration and address information are available and through prominent announcement on all of their websites, that representations in Defendants' Privacy Policy and Disclaimer have been alleged to be false, misleading, unenforceable, impossible to comply with and fraudulent as to users, and that Defendants are solely responsible for any damages or injury to users, as a result of their reliance on the Privacy Policy and Disclaimer;
- e) for an order prohibiting Defendants from providing Microsoft with any links to the Universal video content on Broadcast.
- f) together with interest, costs, attorney's fees and such other and further relief as this Honorable Court deems just and proper under the circumstances.

M. COUNT THIRTEEN: Temporary Restraining Order

112. Universal reincorporates the foregoing statements and allegations of this Complaint as if expressly rewritten herein.

113. The registration and address information at issue in this case are extremely valuable marketing and advertising tools; however, they are also consumable property, and their sale, transfer, disclosure, and use rapidly causes their value to diminish to the point of worthlessness.

114. Because the registration and address information are only of value if they are not sold, transferred, used, or disclosed, and because the property is or may become worthless to the Universal if it is disclosed prior to Universal's assuming control over it, the Universal's property interests will be irreparably harmed if the Defendants are not immediately enjoined from selling, transferring, using, or disclosing the Universal's property until hearing on the temporary injunction can be had.

115. Should the Defendants transfer or disclose this registration and address information, they will cause immediate and irreparable loss to the Universal, as the market for the information will have so diminished as to make the information worthless. Based on conversations with the Universal's representatives and others in the World Wide Web internet marketing business, Universal's counsel believes that the address information has substantial worth, but that its distribution and use, especially its distribution to Yahoo, will sharply diminish its value once and for all time.

116. Universal has notified Steven H. Stodghill, counsel for Defendant Broadcast, of its intention to seek this Temporary Restraining Order against both Broadcast and Yahoo; however, Universal believes that this Temporary Restraining Order should be entered prior to further notice or opportunity to be heard on the parts of Broadcast or Yahoo, as the inconvenience of the Order to Defendants is far outweighed by the danger of further loss by Universal.

117. The Privacy Policy and Disclaimer described above falsely state or indicate that information has not been disclosed to Universal in the past, and will not be disclosed to Universal without the user's permission, and that the user may deny Universal access to registration information while still gaining access Universal's video programming. The Privacy Policy and Disclaimer also indicate or imply that the Universal has agreed to, accepted, and is and has been in compliance with all of its terms for the duration of its association with Broadcast and Yahoo.

118. Defendants' compliance with their stated Privacy Policy and Disclaimer requires them to breach their contractual obligations to the Universal, as Defendants cannot allow access to users who do not provide registration information to the Universal, and because Universal is entitled to registration information from all video users on Broadcast's websites.

119. As a direct and proximate result of Defendants' statement of a fraudulent, misleading, deceptive, Privacy Policy and Disclaimer that cannot possibly be complied with by either Universal or Defendants, the Universal is subject to liability for fraud, conversion, breach of Contract, invasion of privacy, and other causes of action from a user base estimated by Defendants to be 80 million users per month.

WHEREFORE, Universal demands judgment against all Defendants on its Thirteenth Claim for Relief for a temporary restraining order granting the following relief:

- a) for an Order prohibiting Defendants from selling, transferring, using, or disclosing the address information that is the subject of the Contract between Universal and Broadcast, until such time as this suit is resolved;

- b) for an Order prohibiting Defendants from implementing their stated Privacy Policy and Disclaimer until such time as this suit is resolved;
- c) for an Order requiring Defendants to alert all users and registrants, through direct mail where address information is available and through prominent announcement on all of their websites, that Defendants' Privacy Policy and Disclaimer are retracted and cannot be implemented until the issues raised by this suit are resolved;
- d) for an Order requiring Defendants to alert all users and registrants, through direct mail where address information is available and through prominent announcements on all of their websites, that representations in Defendants' Privacy Policy and Disclaimer have been alleged to be false, misleading, unenforceable, impossible to comply with and fraudulent as to users, and that Defendants are solely responsible for any damages or injury to users, as a result of their reliance on the Privacy Policy and Disclaimer;
- e) for an order prohibiting Defendants from providing Microsoft with any links to the Universal video content on Broadcast.
- f) for an Order appointing a Receiver to collect all data from every registration and from every cookie collected by Broadcast.com, and every permutation of such data, as well as all information on how that data was put to use by any Defendant, gathered from either users viewing Universal's videos, other videos, any video accessed from a Broadcast.com web page, and any data gathered from users or visitors to

Broadcast.com web pages whose use or viewership of any video or other material cannot be determined;

g) together with interest, costs, attorney's fees and such other and further relief as this Honorable Court deems just and proper under the circumstances.

N. COUNT FOURTEEN: Declaratory Judgment - Yahoo and Broadcast

120. Universal reincorporates the foregoing statements and allegations of the Complaint as if expressly rewritten herein.

121. Pursuant to the Contract, Plaintiff is entitled to certain data gained by Broadcast from its users. In partial and often only momentary compliance with that contractual obligation, Broadcast has turned over certain data related to its users to the plaintiff, and in discovery, has made evident that more data exists.

122. The data includes the users' first and last name, their e-mail address, their passwords, their zip codes, their country of residence, and their connection type and connection speed. These last two are derived, not from voluntarily provided registration information, but from so-called "cookie" information. However, even the registration information is only conditionally provided, with the users having the right to retract or protect that information before it is provided to third parties.

123. Unlike registration information, however, "cookie" information is taken from the users' computer without the users' consent. According to Yahoo!Broadcast's web page Privacy Policy:

"As part of offering and providing our services, Yahoo!Broadcast uses cookies to store and sometimes track information about you. A cookie is a small amount of data that is sent to your browser from a web server and stored on your computer's hard drive. All areas on our web site where you are prompted to register require that you accept cookies."

124. The use of cookies by Broadcast appears to violate both the criminal and civil laws of Texas. Before Universal makes further use of this data or accepts further data for use when it is based on cookies, it would ask this Honorable Court for a declaration on the legality of Broadcast's use of cookies, its gathering of cookie information, and its transferring of data collected from cookies to Universal.

125. As admitted by Broadcast, a surveillance cookie of Broadcast is stored on users' hard drives. That is, without consent or permission, without purchasing memory or renting space, absent any agreement with the owners of the hard drive permanently to give up space on their hard drives, such space is deliberately, intentionally, and without legal consideration converted, taken, and held. Within the privacy of users' homes, cookies have the ability to trace users' every computer movement. The privacy that any computer user would and should and is justified in expecting is illusory; Big Brother shrunk to a miniature cyber spy always looms and never sleeps.

126. Under Texas law, the taking of property of another without their consent is theft. Specifically, under Texas Penal Code Sec. 31.03, "A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property. Appropriation is unlawful if it is without the owner's effective consent." Broadcast admits by its own Privacy Policy that it takes

space on users' hard drives and that users are required to accept cookies. This appears, *prima facie*, to constitute theft. As the Contract calls for the fruits of this apparent theft to be turned over to Universal, and to some extent that has already occurred, it is imperative that Universal know whether it is receiving the fruits of a poisonous tree.

127. According to the Privacy Policy of Broadcast, there are a number of purposes for and actions perpetrated by Broadcast in planting its cookies on the hard drives of its unconsenting users. Specifically,

"Generally, we use cookies to:

(1) Remind us of who you are and to access your account information (stored on our computers) in order to deliver to you a better and more personalized service. This cookie is set when you register so that you do not have to re-login on every visit to our web site.

(2) Estimate our audience size. Each browser accessing Yahoo!Broadcast is given a unique cookie which is then used to determine the extent of repeat usage, usage by a registered user versus by an unregistered user, and to help target advertisements based on user interests and behavior.

Yahoo!Broadcast's primary goal in collecting personal information is to provide you, the user, with a customized experience on our web site. This includes providing content, personalization services, interactive communications, online shopping and many other types of services, most of which are completely free to you. In order to provide services free of charge, we display advertisements. By knowing a little about you, Yahoo!Broadcast is able to deliver more relevant content and advertisements, and hence better service, to you.

In our role of delivering targeted advertisements, Yahoo!Broadcast plays the middleman. Advertisers give us an advertisement and tell

us the type of audience they want to reach (for example, males over 35 years old). Yahoo!Broadcast takes the advertisement and displays it to users meeting that criteria. In this process, the advertiser never had access to an individual's information. Only Yahoo!Broadcast has access to individuals' information. You will only receive email newsletters from Yahoo!Broadcast if you asked to receive them.

Yahoo!Broadcast does research on our users' demographics, interests, and behavior based on the information provided to us upon registration, during a promotion, from our server log files or from surveys. We do this to better understand and serve our users. This research is compiled and analyzed on an aggregated basis. Yahoo!Broadcast may share this aggregated data with advertisers or business partners."

Taken in total, such uses allow Broadcast to watch, to spy, to conduct surveillance, to analyze the habits, inclinations, preferences, and tastes, and otherwise to follow and stalk those who visit the Broadcast site.

128. By its own disclosures and declarations, Broadcast appears to have admitted, beyond any reasonable doubt, that it has knowingly participated in a series of wrongful acts or transactions, while engaged in interstate and foreign commerce, which conduct was and is predicated upon the unauthorized access to the computer systems and the unauthorized use of the property of persons who visit their website in that:

- A. Broadcast knowingly uses and operates the property of another without the consent of the owner or person authorized to give consent;
- B. Broadcast knowingly gains access to, attempts to gain access to, or causes access to be gained to computers, computer systems, or computer networks without the consent of, or beyond the scope of the express or implied consent of the owner of the computer, computer system, or computer network or other person authorized to give consent to the owner.

In short, Broadcast makes no attempt to ascertain and has no basis for knowing whose computer it is to which their cookies attach. Ownership of the property thus converted to Broadcast's use remains an enigma and Broadcast remains ultimately unconcerned with respect to the overarching privacy and ownership issues which, under the law of the State of Texas, should impede Broadcast's surreptitious trespass upon private property to plant and cultivate their insidious and infernal honing and spying devices.

129. Under Texas law, tracking another in a way that would be perceived as threatening, as part of the act of committing an offense (such as theft), constitutes stalking. Specifically, under Texas Penal Code Sec. 42.072,

(a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct, including following the other person, that:

(1) the actor knows or reasonably believes the other person will regard as threatening;

(C) that an offense will be committed against the other person's property;

(2) causes the other person or a member of the other person's family or household to be placed in fear of bodily injury or death or fear that an offense will be committed against the other person's property; and

(3) would cause a reasonable person to fear;

(C) that an offense will be committed against the person's property.

130. In addition to these criminal offenses, the above actions by Broadcast appear to constitute a number of civil wrongs under Texas law. Specifically, its actions appear to constitute civil theft, conversion, and trespass.

Broadcast appears to have committed civil theft pursuant to Texas Civil Practice and Remedies Code Secs. 134.000 *et seq.*, in that it unlawfully obtained goods from users with intentional or reckless disregard of those users' rights. These goods include part of the space on computer hard drives and personal information belonging to users.

Broadcast appears to have committed conversion, in that it has taken control of users' property and wrongfully exercised control in a manner inconsistent with those users' ownership. This includes taking control both of part of computer hard drives and personal information about users' property and persons.

Broadcast appears to have committed trespass, in that it has wrongfully taken control of users' property, exercised control in a manner inconsistent with users' ownership and to the excluding of their rights in the property, and deprived them of the property by using the property for its own gain and the gain of others. This includes taking control and depriving users of part of the computer hard drive and the taking and sharing of personal information.

131. In all the actions under this Count, Yahoo has assisted, supervised or succeeded to the position of Broadcast, and would be liable and responsible for any and all offenses, crimes, torts, and defalcations in just the manner of Broadcast, and to the same degree and extent.

WHEREFORE, Universal would ask this Court for a declaration as to whether or not the information that has previously been provided and is owed in the future by Broadcast and Yahoo to Universal, in that part of it comes from the use of cookies, is illegal pursuant to Texas law as violations of:

1. Criminal theft laws.
2. Criminal stalking laws.
3. Civil theft laws.
4. Civil conversion laws.
5. Civil trespass laws.

O. **COUNT FIFTEEN: Contract Breach of Exclusive Licensing Agreement - Yahoo and Broadcast**

131. Universal reincorporates the foregoing statements and allegations in this Complaint as if expressly rewritten herein.

132. The Contract between Universal and Broadcast and Universal and Yahoo as Broadcast's successor calls for an exclusive license to be granted by Universal to Broadcast and Yahoo. Such a Contract calls for, *inter alia*, duties of good faith, fair dealing, and reasonable efforts.

133. In January of 2000, Yahoo and Broadcast caused all videos supplied by Universal to be removed from their website in violation of the Contract and the aforementioned duties.

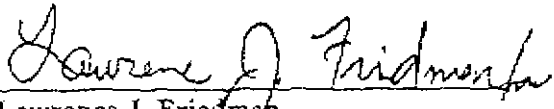
134. As a direct and proximate result of Yahoo and Broadcast's breaches of Contract, Universal has sustained damages including, without limitation, diminished value of property, lost

income, capital and profits, professional fees, expenses and liabilities, and other damages in an amount not less than \$1,000,000,000 or One Billion Dollars.

WHEREFORE, Universal demands judgment against Defendant Yahoo on its Fifteenth Claim for Relief for all direct, incidental and consequential damages suffered by Universal as a result of the breaches of Contract, together with interest, costs, attorney's fees and such other and further relief as this Honorable Court deems just and proper under the circumstances.

Respectfully submitted,

FRIEDMAN, DRIEGERT & HSUEH, L.L.C.

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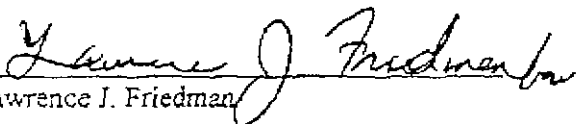
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CERTIFICATE OF SERVICE

This to certify that a true and correct copy of the foregoing document was served upon all counsel of record in accordance with the Texas Rules of Civil Procedure, on this the 18th day of January, 2000.


Lawrence J. Friedman