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1899-1990

FRANCIS T.P. PLIMPTON
1900-1983

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BEVIS LONGSTRETH
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JONATHAN A. SMALL
OF COUNSEL

* NOT ADMITTED IN NEW YORK

October 28, 1999

BY EXPRESS MAIL

Mr. Ken Miller
NFL Today
P.O. Box 1067
Clearlake Park, CA 95424

NFLtoday.com
NFLtoday.net
NFLtoday.org
theNFL.org
theNFLtoday.com
theNFLtoday.net
theNFLtoday.org

Dear Mr. Miller:

We represent National Football League Properties, Inc. ("NFL Properties"), the exclusive representative of the National Football League (the "NFL") for the licensing and protection of its name, logos, symbols and other identifying marks. NFL Properties is responsible for protecting and enforcing the intellectual property rights of the NFL and its Member Clubs.

FAX TRANSMISSION - CONFIDENTIAL

As you obviously know, one of the NFL's most famous trademarks is NFL®. The NFL owns a federal registration for the NFL® trademark (Reg. No. 886,055) which is incontestible. The NFL also owns a federal registration for the NFL shield trademark (Reg. No. 1,056,303) which is also incontestible.

NFL Properties has learned that you are using the famous, federally-registered NFL® trademark in connection with a website promoting gambling services available via the Internet. Among other things, you have registered — under a trade name (NFL Today) that violates the NFL trademark — numerous domain names incorporating the famous, federally-registered NFL® trademark (hereinafter “the misappropriated NFL domain names”). The website at NFLtoday.com (also found at NFLtoday.net and NFLtoday.org), makes extensive, unauthorized use of the NFL shield and other design trademarks belonging to the NFL and its Member Clubs while providing Internet users and consumers with information about the NFL and its Member Clubs geared to sports gambling, along with several prominent links to sports gambling.

This letter is to put NFL Today on express notice that these and similar unauthorized commercial uses of the famous, federally-registered NFL® mark and the NFL shield mark violate the NFL's exclusive trademark and other legal rights and will not be tolerated.

Among other things, the conduct of NFL Today violates Sections 32 and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a). Unauthorized use of the NFL® trademark in connection with your trade name and the misappropriated NFL domain names described above is likely to create the false impression that NFL Today and any website found at the misappropriated domain names originates with or is sponsored by the NFL, or that a licensing, affiliation or endorsement relationship exists between NFL Today and the NFL, or both. Your extensive, unauthorized use of the NFL shield trademark on your websites increases the likelihood that consumers will be confused. In fact, no such relationship or endorsement exists, and NFL Today's unauthorized use of the NFL® trademark is actionable under federal and state laws. Planned Parenthood v. Bucci, 42 U.S.P.Q.2d (BNA) 1430 (S.D.N.Y. 1997) (defendant's use of plaintiff's trademark in domain name likely to cause consumer confusion), aff'd 152 F.3d 920 (2d Cir.), cert. denied, 1998 WL 249092 (1998); Jews for Jesus v. Brodsky, 993 F. Supp. 292 (D.N.J.), aff'd without opinion, 159 F.3d 1351 (3d Cir. 1998) (same).

Moreover, the unauthorized use of the NFL® trademark in your trade name and the misappropriated NFL domain names is likely to dilute and detract from the distinctiveness of the NFL® trademark, resulting in harm to the NFL and to the goodwill symbolized by the NFL® trademark. Your conduct is actionable under the Trademark Dilution Act of 1995, 15 U.S.C. § 1125(c) and state trademark dilution law. See Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316 (9th Cir. 1998). Unauthorized use of the famous and well-respected NFL® mark in connection with gambling-related

activities unlawfully tarnishes the image of the NFL, particularly in light of the NFL's strong stance against such activities. See Anheuser-Busch, Inc. v. Balducci Publications, 28 F.3d 769, 777 (8th Cir. 1994) (tarnishment occurs when a defendant uses the same or a similar mark in a way that creates an undesirable or unwholesome mental association with the plaintiff's mark). Your unauthorized use of the NFL® trademark also constitutes misappropriation of the valuable goodwill, reputation and business property of the NFL in violation of common law. See Jews for Jesus, 993 F. Supp. 292; see also Planned Parenthood, 42 U.S.P.Q.2d (BNA) 1430.

Furthermore, NFLtoday.com is "framing" the content of NFL.com and other NFL websites without permission. As a result of your practice of framing, Internet users are not able to differentiate between your web pages, links and advertisements and those of the NFL. This practice of linking to and framing the content of NFL.com and other websites is inherently confusing to Internet users and infringes the content of the NFL's copyrighted websites. See Washington Post Co. v. TotalNews, Inc., Case No. 97 Civ. 1190 (PKL) (S.D.N.Y. Compl. filed Feb. 20, 1997); Ticketmaster Corp. v. Microsoft Corp., No. 97-3055 (DDP) (C.D. Cal. Compl. filed Apr. 28, 1997) (both settled in favor of the copyright holder).

NFL Properties has also noted numerous other problems with your site, including violations of the United States criminal code, 18 U.S.C. § 1084. You should be on notice that this letter does not purport to be an exhaustive recitation of each and every cause of action that the NFL or its Member Clubs may have against you.

NFL Properties regards this as a very serious matter. A response indicating that NFL Today will immediately cease the foregoing activities is required by no later than November 1, 1999 in order to resolve this action without resort to litigation.

NFL Properties reserves all of its rights and remedies, including seeking an injunction, damages, costs and attorneys' fees, based on the activities of NFL Today to date.

Very truly yours,

Bruce P. Keller

cc: David M. Proper, Esq., National Football League Properties, Inc.
Dorothy Mitchell, Esq., National Football League

(copy by e-mail to ken@NFLtoday.com)

JUDGE MCKENNA

Bruce P. Keller, Esq. (BK 9300)
Michael R. Potenza, Esq. (MP 2969)
DEBEVOISE & PLIMPTON
875 Third Avenue
New York, New York 10022
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CABLE NEWS NETWORK, L.P., L.L.L.P., :
GANNETT SATELLITE INFORMATION :
NETWORK, INC., MEDIA WEST-GSI, INC., :
THE NEW YORK TIMES COMPANY and its :
wholly owned subsidiary, TIMES COMPANY :
DIGITAL, INC., THE WASHINGTON POST :
COMPANY, and its wholly-owned subsidiary, :
WASHINGTONPOST. NEWSWEEK :
INTERACTIVE COMPANY, :
Plaintiffs,

JUN 29 2000

Civ. 00-

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COMPLAINT

v.

GOSMS.COM, INC., GOSMS.COM, LTD.
YUVAL GOLAN, DR. MICHAEL GOLAN,
BRIAN SAGI and KAREN SPINKS,

Defendants.

-----X
Plaintiffs Cable News Network, L.P., L.L.L.P. ("CNN"), Gannett Satellite Information Network, Inc. ("Gannett Satellite"), Media West-GSI, Inc. ("Media West"), The New York Times Company ("The New York Times") and its wholly-owned subsidiary Times Company Digital, Inc. ("Times Digital"), and the Washington Post Company ("Washington Post") and its wholly-owned subsidiary, Washingtonpost.Newsweek Interactive Company ("WPNI")-- (collectively, the "Plaintiffs"), by their attorneys, Debevoise & Plimpton, for their complaint against GoSMS.com, Inc., GoSMS.com, Ltd. (collectively, "GoSMS.com"), Yuval Golan

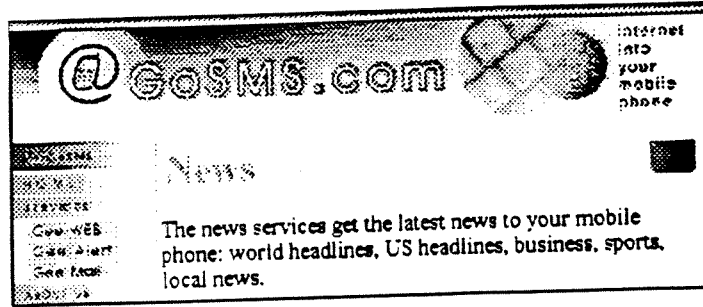
("Golan"), Dr. Michael Golan ("Dr. Golan"), Brian Sagi ("Sagi") and Karen Spinks ("Spinks"),
allege as follows:

NATURE OF THE ACTION

1. This is an action for direct and contributory copyright infringement, false advertising and other trademark violations arising out of a scheme by GoSMS.com to engage in the wholesale, unauthorized copying and transmission of original, copyrighted articles created by the Plaintiffs and originally published at their respective web sites (the Plaintiffs' "Content"). GoSMS.com copies the Plaintiffs' Content and purports to offer to deliver that Content free of charge to users of the GoSMS.com service. Specifically, GoSMS.com competes with the Plaintiffs' web sites by claiming to copy the Content and to transform it into a format capable of being displayed on wireless device screens (such as digital mobile cell phones). According to GoSMS.com, it then transmits the converted Content, in batches of up to 160 characters, to its subscribers.

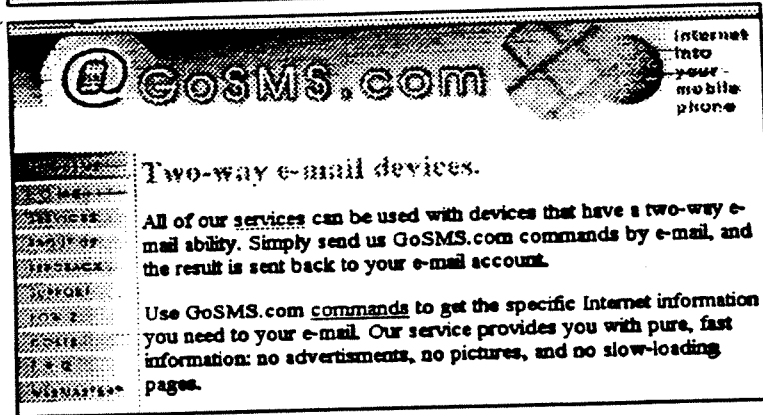
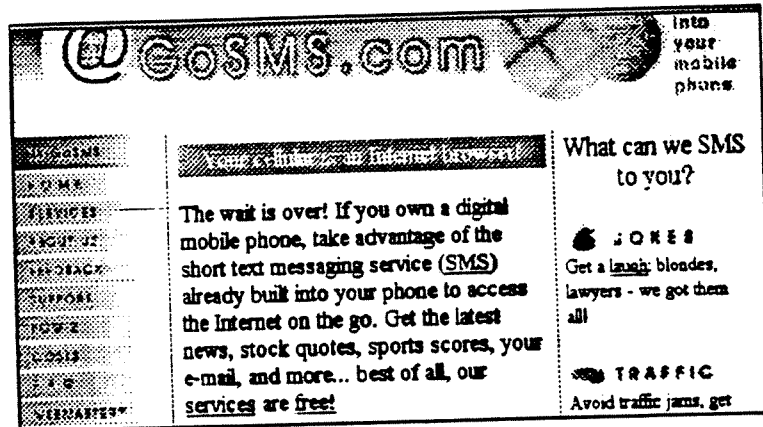
2. The Plaintiffs own the exclusive copyright rights in the Content GoSMS.com copies and distributes. To better deliver their timely Content, all the Plaintiffs have established web sites that are among the most popular sites on the World Wide Web (the "Web"). Several of the Plaintiffs also offer the public access to their Content via wireless devices and others have plans to do so.

3. The value of this Content and the ability to deliver it to the public via wireless devices is not lost on GoSMS.com, which touts its ability to "get the latest news to your mobile phone . . ."



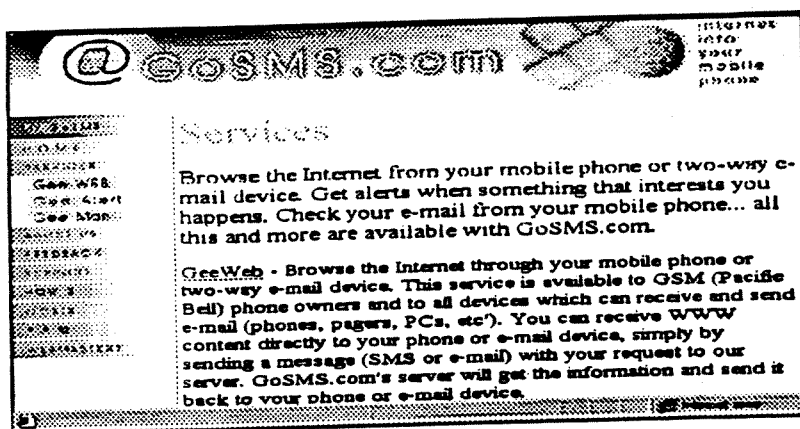
See Exhibit A at A-1.

4. GoSMS.com also boasts that its services are "free," and that it can deliver its content without the advertisements that are meant to accompany the content on the Plaintiffs' web sites:



See Exhibit A at A-3, A-5. That GoSMS.com can accomplish these feats of largesse is not surprising: theft is an extremely cost-effective means of procuring the Plaintiffs' protected Content.

5. GoSMS.com makes sweeping claims for its services, such as the representation that it will deliver the Plaintiffs' Content to "all devices which can receive and send e-mail (phones, pagers, PCs, etc.):"



See Exhibit A at A-6. Notwithstanding these claims, it is clear that GoSMS.com's ability to deliver on those claims is overstated. Although GoSMS.com claims it is currently serving all of its subscribers, various technical difficulties appear to make it impossible for GoSMS.com to deliver *any* content to any *new* wireless device subscribers. New users are currently limited to delivery by GoSMS.com of only headlines and portions of news articles via email.

6. That GoSMS.com falsely overstates its technological capacity to expand its infringement of the Plaintiffs' Content, however, does not mean that it is not liable for copyright infringement it already commits. It currently copies that Content for its own commercial use onto its own servers, and transmits copyrightable portions of that Content, including headlines, to GoSMS.com subscribers. By so doing, GoSMS.com wrests control over that Content from the Plaintiffs, and competes directly with them to reduce, if not destroy, the value of the exclusive

rights in that Content. Once GoSMS.com overcomes its current technological limitations, the already irreparable harm caused by such conduct will only increase exponentially.

THE PLAINTIFFS

7. CNN is a limited liability limited partnership organized and existing under the laws of the State of Delaware with a principal place of business located at One CNN Center, Atlanta, Georgia 30348. CNN is a diversified communications entity that, inter alia, produces news stories and programming, distributed via the nationally and internationally famous CNN network, as well as other networks, including television and radio outlets around the world and Internet web sites, such as cnn.com.

8. Gannett Satellite, a wholly-owned subsidiary of Gannett Co., Inc., is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 1100 Wilson Blvd., Arlington, Virginia, 22234. Gannett Satellite is a diversified communications company that, inter alia, publishes the nationally and internationally famous newspaper, USA Today, both in print and electronically on its web site, www.usatoday.com.

9. Media West, a wholly-owned subsidiary of Gannett Co., Inc., is a corporation organized and existing under the laws of the State of Delaware with a principal place of business located at 50 W. Liberty Street, Suite 802, Reno, Nevada. Media West is the owner of the USA Today® trademark and licenses that trademark to Gannett Satellite for use in the USA Today newspaper and on www.usatoday.com.

10. The New York Times is a corporation organized and existing under the laws of the State of New York with a principal place of business at 229 West 43rd Street, New York, New York 10036-3913. The New York Times is a diversified communications company that,

inter alia, publishes the nationally and internationally famous newspaper, The New York Times, in print and, through its Times Digital subsidiary, in a version available on its web site, www.nytimes.com.

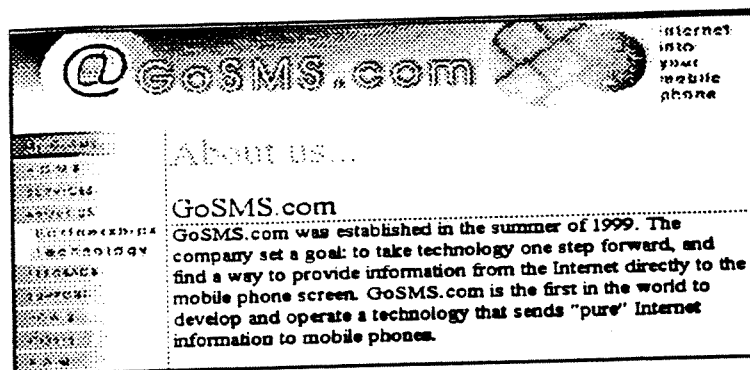
11. Times Digital is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 229 West 43rd Street, New York, New York, 10036-3913.

12. The Washington Post is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 1150 15th Street, N.W., Washington, D.C. 20071. The Washington Post is a diversified communications company that, inter alia, publishes the nationally and internationally famous newspaper, The Washington Post, both in print and, through its wholly-owned subsidiary, WPNI, in a version available on its web site, www.washingtonpost.com.

13. WPNI is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1560 Wilson Boulevard, Suite 800, Arlington, Virginia 22209.

THE DEFENDANTS

14. GoSMS.com, Inc. is a corporation organized and existing under the laws of the State of California and has its principal place of business at 6540 Lusk Boulevard, Suite C-216, San Diego, California 92121-2766. GoSMS.com was formed in the summer of 1999 to "send 'pure' Internet information to mobile phones:"



See Exhibit A at A-8.

15. GoSMS.com, Ltd. is a corporation organized and existing under the laws of Israel and has its principal place of business at Of 18 Yehuda Halevi Street, Tel Aviv, Israel. GoSMS.com, Inc. and GOSMS.com, Ltd. are referred to collectively as "GoSMS.com."

16. Golan is an individual residing, on information and belief, in Israel. Golan is the Chief Executive Officer of GoSMS.com. By virtue of his position and, upon information and belief, his shareholdings, he is one of the individuals that controls the affairs of GoSMS.com and is personally involved in the infringing conduct alleged herein.

17. Dr. Golan is an individual residing, on information and belief, in Israel. Dr. Golan is the Chief Technical Officer of GoSMS.com. By virtue of his position and, upon information and belief, his shareholdings, he is one of the individuals that controls the affairs of GoSMS.com and is personally involved in the infringing conduct alleged herein.

18. Sagi is an individual residing, on information and belief, in the San Diego, California area. Sagi is the manager of GoSMS.com. By virtue of his position and, upon information and belief, his shareholdings, he is one of the individuals that controls the affairs of GoSMS.com and is personally involved in the infringing conduct alleged herein.

19. Spinks is an individual residing, on information and belief, in the San Diego, California area. Spinks is the Director of GoSMS.com. By virtue of her position and, upon information and belief, her shareholdings, she is one of the individuals that controls the affairs of GoSMS.com and is personally involved in the infringing conduct alleged herein.

JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332(a), 1338, and 1367, based, inter alia, on acts of copyright and trademark infringement committed in the United States, and may enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.

21. Each defendant is amenable to service of process, and this Court has personal jurisdiction over them pursuant to N.Y.C.P.L.R. §§ 301 and 302. By operating a business that exists, and derives revenue from, the Internet exclusively, GoSMS.com solicits, and delivers infringing content to, residents of New York on a continuous basis. As a result of its infringement of the Plaintiffs' copyrights and trademarks, GoSMS.com has wrongfully caused and continues to cause the Plaintiffs substantial injury in the State of New York.

22. In the alternative, to the extent that any defendant is not subject to the long-arm jurisdiction of the State of New York, the Court has personal jurisdiction over any foreign defendant pursuant to Fed. R. Civ. P. 4(k)(2) because this action arises under federal law and

each such defendant has contacts with the United States as a whole sufficient to warrant the exercise of personal jurisdiction consistent with the Due Process Clause of the Fifth Amendment.

23. Venue in this Court is proper under 28 U.S.C. §§ 1391(b), (c), and (d) because a substantial part of the events and omissions giving rise to the claim occurred in this District.

THE PLAINTIFFS' VALUABLE INTELLECTUAL PROPERTY

24. The Plaintiffs are among the world's foremost providers of news information and editorial content in cable, broadcast, print and electronic media. In recognition of the superior quality of their fact gathering, news reporting and writing, and editorial content, the Plaintiffs collectively have been awarded numerous journalism awards, including over a dozen Pulitzer Prizes, over the last five years.

25. Each of the Plaintiffs has established a web site to deliver news and other content in a timely fashion to computer users worldwide. Owing to the superior quality of the Plaintiffs' Content, their web sites are among the most popular on the Web, making them attractive to a wide variety of advertisers who wish to reach a large, informed and well-educated market. For example, in March 2000 alone, 4.59 million unique users visited cnn.com, 2.70 million unique users visited usatoday.com, 2.35 million unique users visited nytimes.com and 2.37 million unique users visited washingtonpost.com.

26. Based on this popularity, the Plaintiffs each have established extremely successful businesses licensing their content for republication in a variety of media, including syndication to Internet Service Providers, in databases such as LEXIS-NEXIS, and on CD-ROM. Several of the Plaintiffs, including CNN, USAToday, WPNI and The New York Times, also have entered

into licensing contracts to provide their Content directly to wireless information subscribers, in direct competition with the "free" service provided by GoSMS.com.

GOSMS.COM'S INFRINGING CONDUCT

27. GoSMS.com claims to offer users of wireless devices, such as digital mobile phones and two-way e-mail devices, the ability to receive, inter alia, the Plaintiffs' Content from the Internet through "Short Message Service" ("SMS") technology. The current size of a given SMS message, as its name implies, is limited to 160 letters and symbols. As a result, the GoSMS.com technology naturally lends itself to a "headline" news service. If a subscriber wants, however, GoSMS.com purports to be able to send longer, "full story" messages in batches of 160 characters.

"BBC" is a command for news from www.bbc.co.uk. Type and send the command "BBC" from the command box above. In the result box you will get a list of headlines beginning with a number followed by a colon ":". It will look something like this:

1: Tobacco ad ban setback
2: Russia steps up Grozny blitz
3: Man gets life for triple murder
send num for full story

To see the full story, Type the number before the headline in the command box above. For example, to get the full story about Russia, type 2 in the command box and press "Send". GoSMS.com server will fetch the full story for you.

See Exhibit A at A-10 - A-11. Although the service is primarily targeted to cell phone users, GoSMS.com claims to offer the service to any wireless reception device user.

28. Those whose wireless devices include "Global System for Mobile Communication" technology ("GSM" or "pure digital PCS") can both send and receive SMS messages. GoSMS.com advertises that GSM users can access GoSMS.com's "GeeWeb" service, which allows them to send coded SMS browsing messages often incorporating

Plaintiffs' trademarks (e.g., CNN for CNN content, NDC for Washington Post content, NYT for New York Times content, and USATODAY for USA TODAY content) to GoSMS.com.

GoSMS.com claims to transmit responsive headlines, listed numerically. If the user presses the corresponding number, GoSMS.com then claims to transmit the complete text of the selected article in batches of 160 characters. As GoSMS.com puts it, "Send just the number "1" with no other characters. Our server will send back to you the full story behind the first headline."

You will probably receive the headlines message from our server, split into a number of messages. This is because the GSM network is limited to 160 characters per message. When GoSMS.com server sends messages longer than 160 characters, it splits them as needed.

Note the numbers with the colon after them e.g. "1:", this is GoSMS.com's way of letting you know that "here there is a link".

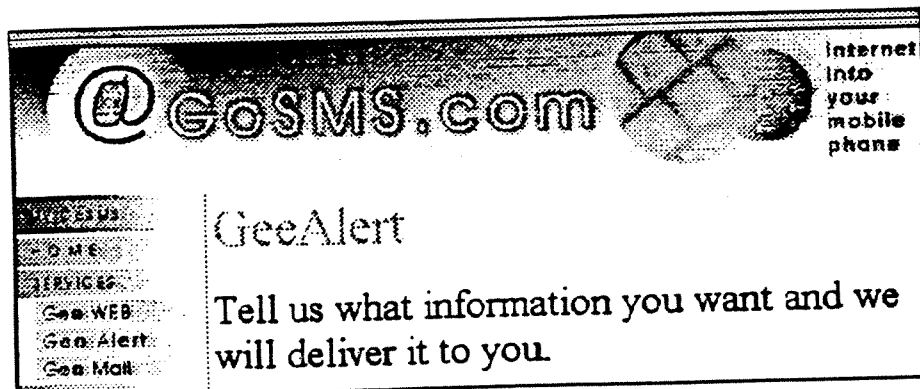
Send GoSMS.com server the command:

1:

Send just the number "1" with no other characters. Our server will send back to you the full story behind the first headline. If you prefer another story, send our server the number before it.

See Exhibit A at A-12 - A-13.

29. For those without two-way GSM capability, GoSMS.com offers its "GeeAlert" service. The user requests in advance particular information to be transmitted at particular times (e.g., CNN headline news at 7 a.m. every morning, or traffic status at 8 a.m. and 6 p.m. every day.) GoSMS.com receives the request and advertises the ability to distribute the information as requested in the two-step manner described above. GoSMS.com characterizes this service as follows:



The advertisement features the GoSMS.com logo at the top left, which includes an '@' symbol with a mobile phone icon inside. To the right of the logo is a mobile phone. The text "Internet into your mobile phone" is positioned to the right of the phone. Below the logo, a list of services is provided: "Gee: WEB", "Gee: Alert", and "Gee: Mail". The main heading "GeeAlert" is centered, followed by the slogan "Tell us what information you want and we will deliver it to you." in a larger font.

See Exhibit A at A-15. This information, as is true of the GeeWeb service, consists of the copyrighted Content owned by the Plaintiffs.

30. GoSMS.com also provides Internet users with the ability to preview both the GeeAlert and GeeWeb services through the use of a "Simulator" on the GoSMS.com web site. A computer user who wishes to see what the services are supposed to look like on their cell phone or two-way email screen can type in the corresponding command. GoSMS.com then sends the same Content to the Simulator screen as the user would receive on his or her cell phone.

31. On at least a daily basis, GoSMS.com makes a minimum of two unauthorized copies of each of the Plaintiffs' copyrighted Content in the process of transmitting it to end-users for display on a wireless device. First, GoSMS.com copies the contents of the Plaintiffs' web sites automatically onto a first set of servers (the "copy servers"). GoSMS.com converts the Content into an SMS-compatible format, by, among other things, stripping it of all non-text material, such as advertisements, photographs and the layout of the web site, and transfers this modified data onto another set of servers (the "transmittal servers"). In response to a browser command, delivered via GSM or other means, it promises to transmit the modified data to the end-user. On information and behalf, GoSMS.com maintains at least two sets of copy and transmittal servers, one set located in the San Diego, California area, and one set located in Israel.

32. At least one other unauthorized copy is created when the end-user receives the material on his or her wireless device or computer. GoSMS.com knows that these unauthorized

end-user copies and displays will be made, actively encourages them, and profits directly from them.

GOSMS.COM COMPETES WITH THE NEWS ORGANIZATIONS

33. GoSMS.com's services are offered to wireless device users for free. On information and belief, GoSMS.com is paid by wireless service providers in return for the increased air time or other charges a user incurs.

34. Several of the Plaintiffs already license their Content to companies that compete with GoSMS.com, and the other Plaintiffs plan to enter similar licensing arrangements in the future. For example, CNN has an arrangement with AvantGo that lets Palm organizer and Windows CE users download its Content from CNN.com and actively plans to license a wireless device information delivery service that would compete directly with GoSMS.com's services. The New York Times licenses its Content to Palm VII, OmniSky and Skytel for wireless delivery to its subscribers.

THE NEWS ORGANIZATIONS OWN THE EXCLUSIVE COPYRIGHTS IN THEIR CONTENT

35. Each edition, whether published in print or electronically, of the Plaintiffs' respective publications contains wholly original work and is copyrightable subject matter under the Copyright Act, 17 U.S.C. § 102(a).

36. Each of the Plaintiffs owns the copyright in its Content, and its selection, coordination and arrangement, contained in each edition of their respective publications, whether published in print or electronically, including that Content identified in Exhibit B to this Complaint. Each of the Plaintiffs will own the copyright in future Content as it is published.

37. Each of the Plaintiffs has registered or is in the process of registering with the U.S. Copyright Office its copyright in the Content in each print and electronic edition of their respective publications. The Plaintiffs have already received, or expect to receive within six months of applying for registration (the standard processing time for the Copyright Office), copyright registration certificates for the Content identified in Exhibit B. This Content is among that which has been copied and displayed by GoSMS.com without authorization as alleged above.

GOSMS.COM'S PLANS TO INFRINGE ARE NOT YET FULLY OPERATIONAL

38. GoSMS.com presently offers its full services to only a limited number of subscribers. Technological limitations appear to make the vast majority of GoSMS.com's services unavailable to *new* subscribers, who currently receive only copyrightable headlines, and, in some instances, portions of articles. Even this limited service is available to subscribers only through e-mail delivery; GoSMS.com utterly fails to make any content available to new cell phone subscribers.

39. This inability to deliver the content it promises to new subscribers, however, does not save GoSMS.com from copyright infringement liability: it only exposes GoSMS.com to false advertising and trademark liability. Indeed, because it makes prominent and unauthorized use of the Plaintiffs' trademarks, including but not limited to the names of the Plaintiffs' respective publications, to promote its only partially operational service, users frustrated by GoSMS.com's false claims will blame the Plaintiffs, with resultant damage to the Plaintiffs' goodwill and reputation.

40. Furthermore, GoSMS.com publicly has announced plans to market its services jointly with Glenayre Electronics, Inc., a provider of wireless messaging infrastructure and services. This joint marketing effort promises greatly to expand GoSMS.com's subscriber base by installing the GoSMS.com service on hundreds of thousands of wireless devices associated with Glenayre.

COUNT I - COPYRIGHT INFRINGEMENT

41. The Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 40 above.

42. GoSMS.com's reproduction and transmission of the Plaintiffs' copyrighted Content for display on the wireless device screens of its United States subscribers violate exclusive rights protected by Section 106 of the Copyright Act, 17 U.S.C. § 106, and so violate Section 501(a) of the Act, 17 U.S.C. § 501(a), because such acts constitute willful and unauthorized reproductions and public displays of those copyrighted works within the United States.

43. The Plaintiffs have been, and continue to be, irreparably damaged by GoSMS.com's violations of the Copyright Act, and they have no adequate remedy at law. Unless restrained by this Court, the violations will continue to cause injury to the Plaintiffs and the public.

44. As a result of GoSMS.com's violations of the Copyright Act, the Plaintiffs are entitled to statutory damages in the amount of \$150,000 for each infringement of each of their respective copyrights or such sum (not less than \$750 per infringement) as the Court, in its discretion, may consider just under 17 U.S.C. § 504(c).

COUNT II – CONTRIBUTORY COPYRIGHT INFRINGEMENT

45. The Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 44 above.

46. GoSMS.com's transmission of the Plaintiffs' copyrighted Content for copying to and display on the wireless device screens of its United States subscribers constitutes contributory infringement in violation of exclusive rights protected by Section 106 of the Copyright Act, 17 U.S.C. § 106, and so violates Section 501(a) of the Act, 17 U.S.C. § 501(a), because GoSMS.com knowingly and materially contributes to the unauthorized public display and the reproduction of those copyrighted works within the United States.

47. The Plaintiffs have been, and continue to be, irreparably damaged by GoSMS.com's violations of the Copyright Act, and they have no adequate remedy at law. Unless restrained by this Court, the violations will continue to cause injury to the Plaintiffs and the public.

48. As a result of GoSMS.com's violations of the Copyright Act, the Plaintiffs are entitled to statutory damages in the amount of \$150,000 for infringement of each of their respective copyrights or such sum (not less than \$750 per infringement) as the Court, in its discretion, may consider just under 17 U.S.C. § 504(c).

COUNT III – STATE LAW TORTIOUS INTERFERENCE

49. The Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 48 above.

50. GoSMS.com intentionally strips third-party advertising material from the Plaintiffs' web sites in order to transmit "pure" Internet content – that is, the Plaintiffs' copyrighted content without the advertising that is intended to accompany it.

51. GoSMS.com has made the Plaintiffs' performance of their advertising contracts more burdensome and has interfered with the benefits that advertisers bargained for when they contracted with the Plaintiffs to advertise on their respective web sites.

52. GoSMS.com's conduct described above constitutes intentional and improper interference with the Plaintiffs' performance of their contracts with their respective web site advertisers.

53. The Plaintiffs have been, and continue to be, irreparably damaged by GoSMS.com's tortious interference with the performance of these contracts, and they have no adequate remedy at law. Unless restrained by this Court, the tortious interference will continue to cause injury to the Plaintiffs and the public.

54. As a result of GoSMS.com's acts, the Plaintiffs have suffered and are continuing to suffer actual damages in amounts greater than \$75,000, exclusive of interest and costs, that cannot be ascertained precisely at this time.

COUNT IV: FALSE ADVERTISING UNDER THE LANHAM ACT

55. The Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 54 above.

56. The false, deceptive and misleading statements and failures to disclose described above are material, have a tendency to deceive or confuse, and actually have deceived or confused, a significant segment of their intended audience.

57. This deception and confusion is the inevitable result of GoSMS.com's failure truthfully to disclose that the GoSMS.com service is not available to any new cell phone subscribers and provides only limited content in other formats.

58. By engaging in the activities described above, GoSMS.com has made and is making false, deceptive and misleading statements constituting false representations made in connection with services it distributes in interstate commerce in violation of 15 U.S.C. § 1125(a).

59. Such violations have injured and will continue to injure the Plaintiffs and the public, causing deception, confusion and damage in an amount that at this time cannot be ascertained.

60. GoSMS.com's acts of false advertising have caused irreparable injury to the Plaintiffs' goodwill and reputation and, unless restrained, will cause further irreparable injury, leaving Plaintiffs with no adequate remedy at law.

COUNT V: TRADEMARK INFRINGEMENT UNDER THE LANHAM ACT

61. The Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 60 above.

62. As a result of the superiority of the Plaintiffs' Content and the Plaintiffs substantial investments in advertising and brand promotion, the Plaintiffs' trademarks, including but not limited to the names of the Plaintiffs' respective publications, are some of the most

renowned and immediately recognizable in publishing today. Attached as Exhibit C is a partial list of the Plaintiffs' trademarks and the registration numbers for them.

63. Defendants' actions described above have caused and are likely to cause confusion and mistake and to deceive customers and potential customers as to the source, origin, or sponsorship of the services provided by GoSMS.com.

64. The unauthorized use of the Plaintiffs' trademarks infringes the Plaintiffs' trademarks, has caused, and unless restrained will cause, damage to the Plaintiffs and the substantial business and goodwill symbolized by the Plaintiffs' trademarks, in an amount that cannot presently be ascertained, in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114, leaving Plaintiffs with no adequate remedy at law.

COUNT VI: TRADEMARK INFRINGEMENT UNDER FEDERAL COMMON LAW

65. The Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 64 above.

66. The Plaintiffs have used their distinctive trademarks in connection with their respective publications and related services. By reason of the Plaintiffs' long-standing and extensive use, the Plaintiffs' trademarks have become uniquely associated with the Plaintiffs and identify them as the source of their respective publications and services.

67. GoSMS.com's unauthorized use of the Plaintiffs' trademarks has caused or is likely to cause confusion or mistake or to deceive customers, consumers, the general public and the retail trade as to the affiliation, connection or association between GoSMS.com and the

Plaintiffs, and as to the origin, sponsorship, or other association of GoSMS.com's service and the Plaintiffs' respective publications and/or services.

68. By reason of the foregoing, GoSMS.com has infringed and is continuing to infringe the Plaintiffs' common law rights in and to their trademarks.

COUNT VII: TRADEMARK DILUTION UNDER THE LANHAM ACT

69. The Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 68 above.

70. The Plaintiffs' trademarks listed in Exhibit C are famous under the Federal Trademark Dilution Act of 1995, 15 U.S.C. § 1125(c)(1). Among other things: (a) the trademarks are inherently distinctive and also have acquired a high degree of distinctiveness; (b) the trademarks have been associated with the Plaintiffs for decades; (c) the trademarks have been widely publicized in news media reports and promoted by the Plaintiffs in the United States and across the world; (d) the trademarks are predominant trademarks in the publishing and news media industry; (e) the trademarks have an extremely high degree of recognition among consumers of news-related services; and (f) the Plaintiffs own federal trademark registrations for many of the trademarks.

71. GoSMS.com, by using, among other things, the Plaintiffs' trademarks in conjunction with their inoperable web site, are likely to tarnish, dilute and detract from the distinctiveness of the trademarks by creating a negative association between GoSMS.com's service and the Plaintiffs, with consequent damage to the Plaintiffs, and to the substantial business and goodwill symbolized by the Plaintiffs' trademarks, in violation of the Federal Trademark Dilution Act, 15 U.S.C. § 1125(c).

72. GoSMS.com's acts of trademark dilution have caused and unless restrained will continue to cause great and irreparable injury to Plaintiffs, to the Plaintiffs' trademarks and to the substantial business and goodwill represented thereby, in an amount that cannot be presently ascertained, leaving the Plaintiffs with no adequate remedy at law.

73. GoSMS.com's conduct has been undertaken with a willful intent to trade on the reputation of the Plaintiffs and to cause dilution of the Plaintiffs' famous trademarks, and this conduct entitles the Plaintiffs to damages and the other remedies available pursuant to 15 U.S.C. § 1125(c)(2).

COUNT VIII: TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION UNDER STATE LAW

74. The Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 73 above.

75. GoSMS.com's actions as described above constitute trademark infringement and unfair competition in violation of the Plaintiffs' rights under the common law of the State of New York and N.Y. Gen. Bus. Law § 360-k.

COUNT IX: TRADEMARK DILUTION UNDER STATE LAW

76. The Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 75 above.

77. GoSMS.com's actions as described above are likely to dilute and detract from the distinctiveness of the Plaintiffs' trademarks, with consequent damage to Plaintiffs and the business and goodwill symbolized by said trademarks, in violation of the New York Anti-Dilution Statute, N.Y. Gen. Bus. Law §360-l.

COUNT X: DECEPTIVE ACTS AND PRACTICES

78. The Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 77 above.

79. GoSMS.com's actions as described above constitute trademark infringement and unfair competition in violation of the Plaintiffs' rights under the common law of the State of New York and N.Y. Gen. Bus. Law § 360-o.

RELIEF

WHEREFORE, the Plaintiffs pray that the Court grant the following relief:

- A. Declare that GoSMS.com's unauthorized reproduction and public display of the Plaintiffs' copyrighted Content constitutes infringement of the Plaintiffs' exclusive reproduction and public display rights in such works;
- B. Declare that GoSMS.com's contribution to the unauthorized reproduction and public display of the Plaintiffs' Copyrighted content constitutes contributory infringement of the Plaintiffs' exclusive reproduction and public display rights in such works;
- C. Declare that GoSMS.com has tortiously interfered with the Plaintiffs' performance of their contracts with their web-based advertisers;
- D. Declare that GoSMS.com has violated the Lanham Act, common law and N.Y. Gen. Bus. Law § 360 by falsely advertising its services and by its unauthorized use of the Plaintiffs' trademarks;
- E. Grant a injunction against GoSMS.com, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with it, prohibiting them from: (1) reproducing or publicly displaying or contributing to the reproduction or public display of any of the Plaintiffs' copyrighted Content without the pertinent Plaintiffs'

authorization; (2) falsely advertising its services; and (3) using the Plaintiffs' trademarks, or any mark confusingly similar to the Plaintiffs' trademarks, in connection with their service;

F. Require GoSMS.com to pay each of the Plaintiffs the sum of \$150,000 in statutory damages for each copyrighted work directly or contributorily infringed or such sum (not less than \$750 per infringement) as the Court, in its discretion, may consider just under 17 U.S.C. § 504(c);

G. Require GoSMS.com to pay actual damages and punitive damages in such amount as the Court finds appropriate;

H. Require GoSMS.com to account to the Plaintiffs for profits and any damages sustained by the Plaintiffs arising from the foregoing acts of false advertising, trademark infringement, unfair competition, trademark dilution, and that, in accordance with such accounting, the Plaintiffs be awarded judgment for three times such profits or damages (whichever is greater), together with prejudgment interest, pursuant to 15 U.S.C. §§ 1117(a) and (b) and/or N.Y. Gen. Bus. Law § 360-m;

J. Require GoSMS.com to pay to the Plaintiffs all of the Plaintiffs' costs and reasonable attorneys' fees in accordance with 17 U.S.C. § 505, 15 U.S.C. § 1117(a) and/or N.Y. Gen. Bus. Law § 360-m;

K. Require GoSMS.com to file with the Court and serve on the Plaintiffs' counsel a report setting forth the manner and form of its compliance with the Court's orders; and

L. Award the Plaintiffs such other and further relief as the Court deems just and proper.

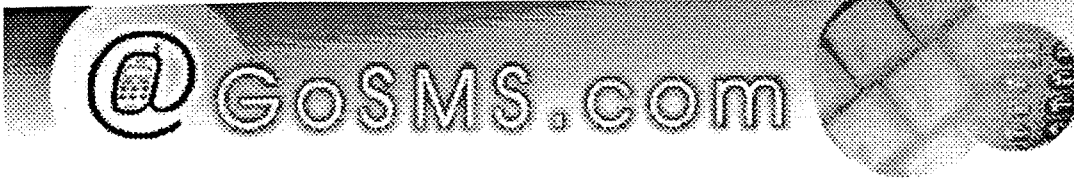
New York, New York
Dated: June 28, 2000

Respectfully submitted,

DEBEVOISE & PLIMPTON

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New York, New York 10022
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L.L.L.P., Gannett Satellite Information Network,
Inc., Media West-GSI, Inc., The New York Times
Company, Times Company Digital, Inc., The
Washington Post Company, and
Washingtonpost.Newsweek Interactive Company.



Internet into your mobile phone

- BY GoSMS
- HOME
- SERVICES
 - Get WEB
 - Get Alert
 - Get Mail
- ABOUT US
- FEEDBACK
- SUPPORT
- HOW 2
- COSTS
- FAQ
- WEBMASTERY

News

The news services get the latest news to your mobile phone: world headlines, US headlines, business, sports, local news.

You need a GSM phone with two-way text messaging (SMS) to use this service. Send the commands from the table below to phone: 1-858-361-8100. Currently available only to Pacific Bell users.

Two-way email-capable phones and pagers: Send (as subject) the commands from the table below to go@gosms.net



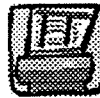
First time users start here



Click the commands to use the simulator.



Advanced users learn about links.



Print GoSMS.com pocket guide.

San Diego residents Click here

SUBJECT & SOURCE

COMMAND

Top story on CNN
www.cnn.com

CNN or N

BBC headlines
www.bbc.co.uk/home/today

BBC

CNN World news headlines
www.cnn.com/world

CNNW

ABC World news headlines
www.abcnews.go.com

ABCW

CNN US news headlines
www.cnn.com/us

CNNU

Condensed news flash from CNN

www.cnn.com	CNNH or NH
CNN Sports news headlines www.cnn.com	CNNS or NS
CNN Business news headlines www.cnn.com/business	CNNB or NB
The Washington Post news headlines www.washingtonpost.com	NDC
The New York Times news headlines www.times.com	NYT
USA Today news headlines www.usatoday.com	USATODAY
digitalMASS technology news www.digitalmass.com/news	NDT
CNN Middle East news www.cnn.com/WORLD/meast/	NE
CNN Middle East main article www.cnn.com/WORLD/meast/	NME

Bold letters are command letters, your message must begin with a command.

Italic letters are parameters that vary according to your request.

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Internet into your mobile phone

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- HOME
- SERVICES
- ABOUT US
- FEEDBACK
- SUPPORT
- HOW 2
- COSTS
- FAQ
- WEBMASTER?

Your cellular is an Internet browser!

The wait is over! If you own a digital mobile phone, take advantage of the short text messaging service (SMS) already built into your phone to access the Internet on the go. Get the latest news, stock quotes, sports scores, your e-mail, and more... best of all, our services are free!

What can we SMS to you?

JOKES
Get a laugh: blondes, lawyers - we got them all!

TRAFFIC
Avoid traffic jams, get traffic reports to your mobile phone.

ALERTS
Get an alert when your stock moves 5%.

MAIL
Send e-mail, check and read your own e-mail.

SPORTS
Sports news, scores and league information.

NEWS
The latest local and world news, from your favorite sites.

WEATHER
Rain, sun, fog? Get the latest weather report to your phone.

- ISRAEL
- עברית
- EUROPE



First time visitor?

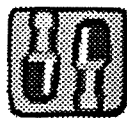
Sprint

Pacific Bell

Orange Israel



See us at Stand C57



Service



Simulator



Commands



My GoSMS



Registration



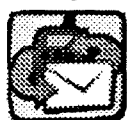
Login



Pocketguide



Broadcast



Thru email

Type your phone number, select your carrier and start using our service. You will receive a test message to verify your phone is text messaging enabled.

Phone number:

Carrier:

Learn more about [phone compatibility](#)

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Two-way e-mail devices.

All of our services can be used with devices that have a two-way e-mail ability. Simply send us GoSMS.com commands by e-mail, and the result is sent back to your e-mail account.

Use GoSMS.com commands to get the specific Internet information you need to your e-mail. Our service provides you with pure, fast information: no advertisements, no pictures, and no slow-loading pages.

GoSMS.com can also offer you Alerts. Set the time and condition on which information from the Internet is sent to your e-mail account and we will send it to your e-mail. You can receive a notification when Microsoft's price quote drops 2%, get the weather report at 8:00AM or the list of the ten best restaurants at 7:00PM.

Try our service now!

Just send an e-mail to go@gosms.net with the command: *BEST* as the e-mail subject. GoSMS.com sends the bestseller books from Amazon back to your e-mail.

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- Gee WEB
- Gee Alert
- Gee Mail
- ABOUT US
- FEEDBACK
- SUPPORT
- HOW 2
- COSTS
- FAQ
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Services

Browse the Internet from your mobile phone or two-way e-mail device. Get alerts when something that interests you happens. Check your e-mail from your mobile phone... all this and more are available with GoSMS.com.

GeeWeb - Browse the Internet through your mobile phone or two-way e-mail device. This service is available to GSM (Pacific Bell) phone owners and to all devices which can receive and send e-mail (phones, pagers, PCs, etc'). You can receive WWW content directly to your phone or e-mail device, simply by sending a message (SMS or e-mail) with your request to our server. GoSMS.com's server will get the information and send it back to your phone or e-mail device.

GeeMail - Users of mobile phones and pagers, can get an alert when new e-mail arrives to your e-mail account. Get the subjects of the messages in your e-mail account. If you have a GSM phone (Pacific bell user) you can send e-mail, check e-mail and even read your mail on your phone.

GeeAlert - Tell us what information you want to receive from the Internet, and our server will fetch it and send it to you as an SMS message or e-mail, at the time you specify. You can ask to receive news from the BBC site only when "Clinton" is mentioned. You can ask to receive the traffic status at 8:00AM and at 5:00PM every day.

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HOME

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Partnerships

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WEBMASTER?

About us...

GoSMS.com

GoSMS.com was established in the summer of 1999. The company set a goal: to take technology one step forward, and find a way to provide information from the Internet directly to the mobile phone screen. GoSMS.com is the first in the world to develop and operate a technology that sends "pure" Internet information to mobile phones.

GoSMS.com uses the SMS system (Short Message Service) to send the information from the Internet to the phone. An essential quality of the SMS system, which gives a tremendous advantage to GoSMS.com technology, is the fact that it exists in every digital mobile phone, worldwide.

An additional quality of GoSMS.com technology is that it operates with GSM services. GSM has a unique characteristic, which gives GoSMS.com's services added value. With other systems, such as CDMA or TDMA, it is possible to receive messages, but impossible to send them. The GSM system gives the user the ability to send messages from the phone. This gives the mobile phone user a clear advantage: he/she can request information from the Internet at any time, and receive it immediately.

GoSMS.com has provided for users of other systems as well. These users have the option to build their own "Personal Information Profile" at the MY.GoSMS.com Internet site, and to receive information according to it.

The services we provide

GoSMS.com offers wide and varied range of information: General news, sport results, entertainment information (bestseller books and movies list), jokes and lottery results. Financial information from different sources in the world including stock quotes,

currencies rate, stock and business news. Additional services include access to an encyclopedia and an English dictionary, arithmetic calculations, a personalized horoscope prediction, weather forecasts worldwide.

GoSMS.com services also include the ability to send and receive e-mail from the mobile phone to and from any e-mail account. The company's services are available free of charge and were created for users of all mobile systems (user must insure that he/she can receive written messages to his/her mobile).

GoSMS.com's management

GoSMS.com was established by Yuval Golan, who is the company's CEO. Dr. Michael Golan is Go.SMS.com's CTO. In 1987, Yuval and Dr. Michael Golan established Tochna Lainyan Ltd. Tochna Lainyan is the leading company in Israel for supplying financial information in real time. Among its customers are the Israeli banking system, broker companies, portfolio managers, commercial companies from all branches of the market, and private investors.

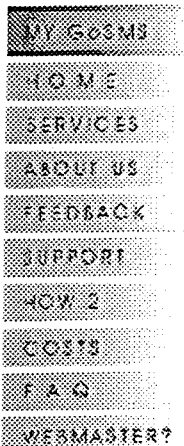
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GoSMS.com

internet
into
your
mobile
phone



The Simulator!

Here you can enter GoSMS.com information commands as if you are sending them from your GSM phone.

Type in the command and click "Send". GoSMS.com's server will receive the command and process it - fetch the information from the Internet, pack it, and send it back to the result box, as if it was your mobile phone.

Not familiar with GoSMS.com commands? Click [here](#) to view a list of the most useful commands on an adjoining window. We suggest you begin with the command "NBA" and see what happens.

Your command:

s e n d

The result:

Note: Due to the way the simulator operates, your browser's "back" button might not work. Use the left hand menu to navigate.

A command is usually 2-4 characters in length, and occasionally has one or more parameters. "NBA" is the command to get NBA results from bball.yahoo.com/NBA Type it in the command box above and click "Send". Within a few seconds, you will get the results in the result box.

"BBC" is a command for news from www.bbc.co.uk. Type and send the command "BBC" from the command box above. In the result box you will get a list of headlines beginning with a number followed by a colon ":". It will look something like this:

```
"1: Tobacco ad ban setback
2: Russia steps up Grozny blitz
3: Man gets life for triple murder
send num for full story
```

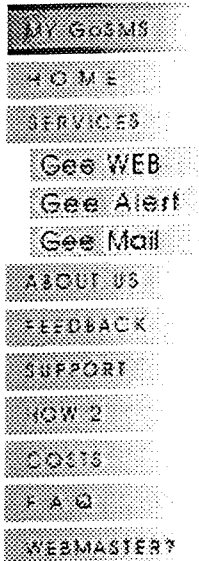
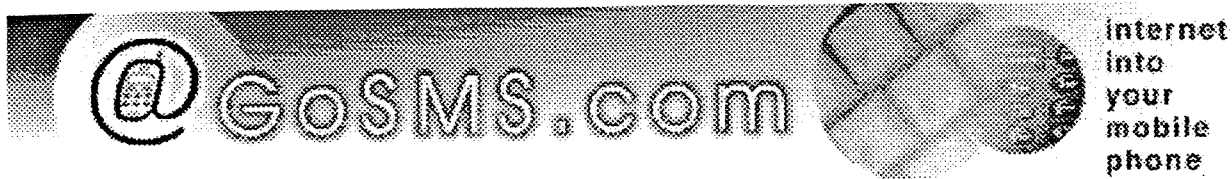
A-10

To see the full story, Type the number before the headline in the command box above. For example, to get the full story about Russia, type 2 in the command box and press "Send". GoSMS.com server will fetch the full story for you.

To learn about new features and commands as we add them, use the "H0" command (H + zero). The result is a "what's new" list of commands and features.

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GeeWeb - Example for GSM phones

Browse the Internet through your mobile phone!

To use GeeWeb service, your phone must support sending text messaging (SMS).

If you didn't do it already, go to our [home page](#) and enter your mobile phone operator name and phone number. This information will help us determine how to send messages from our server to your phone. It will also send you a test message to your phone to make sure you can receive sms messages..

Try our service with this example:

Select "Messages" from the phone menu (see [step-by-step](#) instructions about sending an SMS message), select "Message Editor" or "Write Messages" and type:

ABCW

Send the message to: 1-858-361-8100.

GoSMS.com server will go to [abcnews.go.com](#) and send you back ABC world news.

"ABCW" is one of many GoSMS.com commands. When you send an SMS message that contains this command, our server accesses the [abcnews.go.com](#) web site, gets the news, and sends it back to your mobile phone as an SMS message.

The result you receive to your phone will look something like this:

abcnews.go.com
1:Pope Facing Hostile
Crowd in India
2:Hundreds Killed in
Vietnam Flooding
3:Taliban Dashes U.S.
Hopes on Bin Laden

You will probably receive the headlines message from our server, split into a number of messages. This is because the GSM network is limited to 160 characters per message. When GoSMS.com server sends messages longer than 160 characters, it splits them as needed.

Note the numbers with the colon after them e.g. "1:", this is GoSMS.com's way of letting you know that "here there is a link"!

Send GoSMS.com server the command:

1

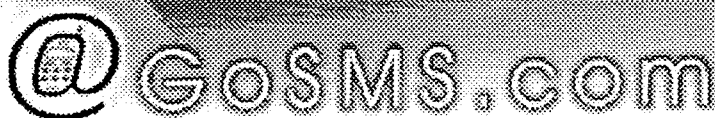
Send just the number "1" with no other characters. Our server will send back to you the full story behind the first headline. If you prefer another story, send our server the number before it.

Commands can be re-named to your liking, e.g. define "MS" instead of "Q MSFT" using Aliases at **MY GoSMS.com**. "Q" is one of the commands that order our server to fetch stock quotes, MSFT is the command parameter.

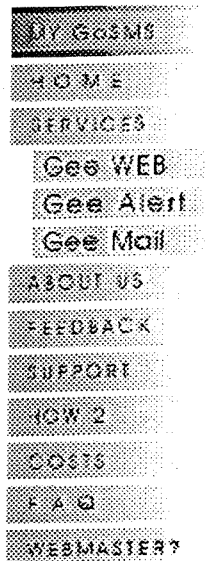
New commands are added every day. To learn about new commands send the "H0" (H followed by zero) command from your GSM phone. If your phone is not GSM-type, or if you wish to receive information about new commands as they are added, subscribe to MY.GoSMS.com and set an alert on the "H0" command.

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into
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mobile
phone



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This service is available to cellular phone which can receive SMS messages and to two-way e-mail devices. Alerts are commands telling our GoSMS.com server to access the Internet and retrieve information for you. The information is sent to your phone or device when a certain condition occurs.

Cellular phone owners, set your alerts at MY.GoSMS.com. Two-way e-mail device owners, please [click here](#) for instructions on setting Alerts.

You can receive the ABC headlines from abcnews.go.com every morning at 8:00, the traffic conditions from www.dot.ca.gov at 9:00 AM and at 5:00 PM, you can get an alert when a security goes up 2.5%, and more.

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EXHIBIT B

Author	Article	Date	Registration
Cable News Network, L.P., L.L.L.P. ("CNN")	"O.J. Simpson says he'll take lie detector test if he's paid"	June 8, 2000	No. TX5-072-505, Effective as of 6/15/00
CNN	"Greek terror group says it killed British diplomat"	June 9, 2000	Pending
CNN	"Montenegro vote is make-or-break time for Djukanovic"	June 9, 2000	Pending
CNN	"Putin to make unprecedented trip to North Korea"	June 9, 2000	Pending
CNN	"Solomons warring factions agree to temporary truce"	June 9, 2000	Pending
CNN	"Mixed picture for Europe"	June 9, 2000	Pending
CNN	"Russia proposes missile defense system to NATO"	June 9, 2000	Pending
CNN	"Iraqi oil-for-food program extended, just before deadline"	June 9, 2000	Pending
CNN	"Justice Department: King assassination was not a conspiracy"	June 9, 2000	Pending
CNN	"Mo' to come"	June 9, 2000	Pending
CNN	"Gang war blamed in killing of L.A. police chief's granddaughter"	June 9, 2000	Pending
CNN	"One of 2 bodies found in barrels on Kansas	June 8, 2000	Pending

	farm may be missing Polish immigrant, prosecutor says”		
CNN	“Rwanda, Uganda show no signs of ending Congo fighting”	June 9, 2000	Pending
CNN	“Alaska Airlines must respond to FAA today on maintenance concerns”	June 9, 2000	Pending
CNN	“MP3.com settles suits”	June 9, 2000	Pending
CNN	“Wholesale prices flat”	June 9, 2000	Pending
CNN	“Wall St. gains evaporate”	June 9, 2000	Pending
Gannett Satellite Information Network, Inc.; Gannett Company, Inc. (“USA Today”)	“U.S., N. Korea to search for GI remains”	June 9, 2000	No. TX5-072-507, Effective as of 6/15/00
USA Today	“Justice: No conspiracy in King murder”	June 9, 2000	Pending
USA Today	“Suspect may be first Net serial killer”	June 9, 2000	Pending
The Washington Post Company; Washingtonpost.Newsweek Interactive (“Washington Post”)	“At Microsoft, Gates Smiles Alone”	June 9, 2000	No. TX5-072-506, Effective as of 6/15/00
Washington Post	“Fire Damage at Los Alamos Lab Exceeds \$300 Million”	June 9, 2000	Pending
Washington Post	“At CIA, Gay Pride Comes In From the Cold”	June 9, 2000	Pending
Washington Post	“Bush, Gore Set Themes For Race”	June 9, 2000	Pending

Washington Post	"Behind the Big Promises, Fine Print"	June 9, 2000	Pending
The New York Times Company; Times Company Digital, Inc. ("New York Times")	"Gore Dots the i's That Bush Leaves to Others"	June 9, 2000	No. TX5-072-504, Effective as of 6/15/00
New York Times	"Antimissile Testing is Rigged to Hide a Flaw, Critics Say"	June 9, 2000	Pending
New York Times	"Senate Approves Step to Overhaul Campaign Finance"	June 9, 2000	Pending
New York Times	"War Adds 1.7 Million Deaths in Eastern Congo, Study Finds"	June 9, 2000	Pending
New York Times	"E.P.A., Citing Risks to Children, Signs Accord to Limit Insecticide"	June 9, 2000	Pending
New York Times	"'Survivor' Is a Strong Draw, Proving Itself a Hit for CBS"	June 9, 2000	Pending
New York Times	"British Attache Is Assassinated on Greek Street"	June 9, 2000	Pending
New York Times	"Putin to Visit North Korea; U.S. ABM Plan May Be Target"	June 9, 2000	Pending
New York Times	"Retracing the Missteps in Microsoft's Defense at Its Antitrust Trial"	June 9, 2000	Pending

EXHIBIT C

Trademark Owner	Word Mark	Registration Number	Registration Date
Media West-GSI, Inc.	USA TODAY®	1330859	04/16/1985
Media West-GSI, Inc.	USA TODAY®	1332045	04/23/1985
Media West-GSI, Inc.	USA TODAY®	1334239	05/07/1985
Media West-GSI, Inc.	USA TODAY®	1337847	05/28/1985
Media West-GSI, Inc.	USA TODAY®	1337848	05/28/1985
Media West-GSI, Inc.	USA TODAY®	1415845	11/04/1986
Media West-GSI, Inc.	USA TODAY®	1415846	11/04/1986
Media West-GSI, Inc.	USA TODAY UPDATE®	1417863	11/18/1986
The Washington Post Company	THE WASHINGTON POST®	1665831	11/26/1991
The Washington Post Company	THE WASHINGTON POST®	1665832	11/26/1991
The New York Times Company	THE NEW YORK TIMES®	0227904	05/17/1927
The New York Times Company	THE NEW YORK TIMES®	2120865	12/16/1997
Cable News Network, Inc.	CNN®	1597839	05/22/1990
Cable News Network, Inc.	CNN AT WORK®	1937104	08/29/1995
Cable News Network, Inc.	CNN EN ESPANOL®	2245511	05/18/1999
Cable News Network, Inc.	CNN CUSTOM NEWS®	2250831	06/08/1999

Cable News Network, Inc.	CNN IN INTERACTIVE®	2256645	06/29/1999
Cable News Network, Inc.	CNN PERSPECTIVES®	2271612	08/24/1999
Cable News Network, Inc.	CNNNEWSSTAND®	2308345	01/18/2000

Bruce P. Keller, Esq. (BK 9300)
Michael R. Potenza Esq. (MP 2969)
DEBEVOISE & PLIMPTON
875 Third Avenue
New York, New York 10022
(212) 909-6000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CABLE NEWS NETWORK LP., L.L.L.P., :
GANNETT SATELLITE INFORMATION :
NETWORK, INC., MEDIA WEST-GSI, INC., :
THE NEW YORK TIMES COMPANY and its :
wholly owned subsidiary, TIMES COMPANY :
DIGITAL, INC., THE WASHINGTON POST :
COMPANY, and its wholly-owned subsidiary, :
WASHINGTON POST NEWSWEEK :
INTERACTIVE COMPANY, :

Case Number 00 Civ. 4812 [LMM]

AFFIDAVIT OF SERVICE

Plaintiffs, :

v. :

GoSMS.com, INC., GoSMS.com, LTD., :
YUVAL GOLAN, DR. MICHAEL GOLAN, :
BRIAN SAGI, and KAREN SPINKS, :

Defendants. :
-----X

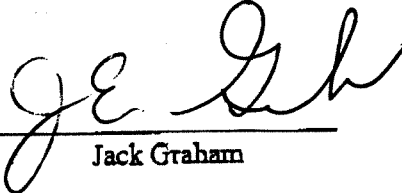
STATE OF CALIFORNIA)
) ss.:
COUNTY OF SAN DIEGO)

JACK GRAHAM, being duly sworn, deposes and says that deponent is not a party
of the action, is over 18 years of age and is a licensed California Private Investigator retained by
The Stonegate Agency, Inc., 5 Hanover Square, New York, New York 10004.

1. On July 5, 2000, at 9:00 a.m., at 6540 Lusk Boulevard, Suite C-218, San Diego, California 92121-2766, I served Karen Spinks, personally and on behalf of GoSMS.com, Inc. with a Summons, Complaint, Civil Cover Sheet and Rule 1.9 Statement for the above-captioned action.

2. The details of the service are as follows. The ground floor lobby directory at 6540 Lusk Boulevard lists GoSMS.com, Inc. as being located in suite C-218. The entrance to Suite C-218 was locked. My knocks upon the door were answered by a female. I explained the purpose of my visit to her. She identified herself as Karen Spinks. I handed a copy of the above-mentioned documents to her and explained that I was serving her individually. I asked, "Are you authorized to accept service of process on behalf of GoSMS.com, Inc.?" She replied, "Yes." I handed another set of the above documents to her.

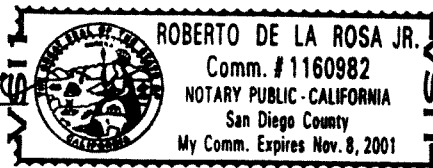
3. Karen Spinks is a white female, approximately 27 to 30 years of age, 5' 4" in height, with dark blond hair


Jack Graham

Sworn to before me this
07 day of July, 2000

Roberto De La Rosa Jr.
Notary Public

40-349A.F.F



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

MAY 28 2004

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

DAVID EGILMAN,

90 West St.
Foxboro, Massachusetts 02035

Plaintiff,

v.

KELLER & HECKMAN, LLP,

Washington Center
1001 G Street, N.W.
Washington, DC 20001

and

DOUGLAS J. BEHR

Washington Center
1001 G Street, N.W.
Washington, DC 20001

and

JONES DAY

51 Louisiana Avenue, N.W.
Washington, DC 20001

Defendants.

CASE NUMBER 1:04CV00876

JUDGE: Henry H. Kennedy

DECK TYPE: General Civil

DATE STAMP: 05/28/2004

**JURY
ACTION**

VERIFIED COMPLAINT

COMES NOW Plaintiff, David Egilman, by and through counsel, King, Pagano &
Harrison, and states as follows:

JURISDICTION AND VENUE

1. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1337, 1338, and 1367.
2. Venue is proper pursuant to 28 U.S.C. § 1391(b).

PARTIES

3. The Plaintiff, David Egilman, is an individual and is a citizen of the Commonwealth of Massachusetts.
4. Defendant Keller & Heckman, LLP is a limited liability partnership doing business in and with an office in Washington, D.C.
5. Defendant Douglas J. Behr is an individual and is a citizen of the State of Maryland. Defendant Behr is a partner in the law firm of Keller & Heckman, LLP, resident in the Washington, D.C. office, who at all times relevant was acting in furtherance of and within the scope of his employment with Keller & Heckman.
6. Defendant Jones Day is an integrated partnership doing business in and with an office in Washington, D.C.

FACTS

7. David Egilman is a medical doctor with a clinical practice in Massachusetts. Dr. Egilman also serves as Clinical Associate Professor in the Department of Community Health at Brown University in Providence, Rhode Island.

VERIFIED COMPLAINT

8. Dr. Egilman is a renowned expert on occupational illnesses resulting from exposure to toxins, as well as an expert in the history of medicine. Dr. Egilman has qualified as a testifying expert in numerous toxic tort cases.

A. **DR. EGILMAN IS A TESTIFYING EXPERT WHO USES A COMPUTER AND PUBLISHES A WEBSITE**

9. At all times relevant to this Complaint, Dr. Egilman used his personal computer ("the Computer" or "Dr. Egilman's Computer") located in Massachusetts to host a website ("the Website" or "Dr. Egilman's Website"). Dr. Egilman used the Computer and the Website to facilitate his medical practice, teaching, research, and expert witness engagements. The Website communicates and preserves information pertaining to occupational and other illnesses resulting from exposure to toxins. The Website is intended to engender debate and discussion through its inclusion of thought-provoking and provocative material.

10. Dr. Egilman's Website contains uncensored information on occupational illness and related litigation, including previously confidential corporate internal documents related to toxic tort cases. The Website provides access to numerous copyrighted works authored by Dr. Egilman and stored on Dr. Egilman's Computer.

11. From time to time, Dr. Egilman has implemented technical measures to restrict access to the Website to those individuals or entities to whom he has provided a password. Dr. Egilman has, on various occasions, offered authorized username/password access to restricted content to his students as part of their course materials, to his clients in the course of his engagements to provide expert analysis and testimony, and to interested parties for a fee.

VERIFIED COMPLAINT

B. DEFENDANTS REPRESENT PARTIES IN LITIGATION WHO ARE OPPOSED TO DR. EGILMAN'S CLIENTS

12. Dr. Egilman was designated as a testifying expert on behalf of the plaintiffs in Staples, et al. v. The Dow Chemical Co., et al., Cause No. 9673*BH99 in Brazoria County, Texas ("the vinyl chloride monomer case" or "the VCM litigation"). In the VCM litigation, Jones Day represented defendants Occidental Chemical Corporation, OxyChem Corporation and Firestone; Keller & Heckman and Mr. Behr represented defendant Society of the Plastics Industry, Inc.

13. Dr. Egilman was also designated as a testifying expert on behalf of the plaintiffs in Michael D. Ballinger v. Brush Wellman, Inc., No. 96CV2532, Division 5, in the District Court for Jefferson County, Colorado ("the beryllium litigation"). In the context of the beryllium litigation, Dr. Egilman further restricted access to the Website to comply with a protective order. Jones Day represented the defendant in the beryllium litigation.

C. DEFENDANTS COMMIT ILLEGAL ACTS AND STEAL PASSWORD-PROTECTED INFORMATION

14. Dr. Egilman became concerned that unauthorized parties were attempting to gain access to restricted content on the Website without paying the required fees. In June 2001, Dr. Egilman placed a demonstrably false entry on the restricted portion of the Website to enable him to know, if the document ever appeared in the public domain, that the Website security had been compromised.

15. In June 2001, Defendants, without authorization, gained access to and misappropriated information from areas of Dr. Egilman's Computer and Website that were protected by a username/password combination.

VERIFIED COMPLAINT

16. To gain access to restricted areas of Dr. Egilman's Computer and Website without authorization, Defendants Keller & Heckman and Behr obtained a username/password combination without authorization. Defendants Keller & Heckman and Behr disclosed the unauthorized username/password combination to their co-counsel in the VCM litigation, Kelly Stewart, who is a partner in Jones Day. Defendant Jones Day used the username/password combination to gain improper and illegal access to Dr. Egilman's Computer and Website without authorization. Defendant Jones Day disclosed this information to persons in Texas, Colorado and elsewhere in connection with Jones Day's representation of defendants in the VCM litigation and in the beryllium litigation.

17. The Defendants improperly and illegally reviewed and printed information from Dr. Egilman's Computer and Website. The Defendants used the information stolen from Dr. Egilman's Computer and Website to besmirch Dr. Egilman's professional reputation and compromise the effectiveness of Dr. Egilman's testimony against their clients in the beryllium and VCM cases.

18. Dr. Egilman discovered Defendants Keller & Heckman and Behr's unauthorized access on November 20, 2002, during the course of sworn testimony given by Kelly Stewart in a deposition.

19. In testimony under oath on November 20, 2002, Kelly Stewart, a partner in Jones Day, testified Jones Day tried to obtain an authorized username/password combination to gain access to Dr. Egilman's Website. Mr. Stewart further testified that he was aware that Dr. Egilman charged a fee for access to the Website, but that Jones Day decided not to pay the required fee for authorized access. Instead, Jones Day obtained an unauthorized

VERIFIED COMPLAINT

username/password combination from Defendant Behr, a partner with Defendant Keller & Heckman.

20. Dr. Egilman did not provide a password to Defendant Keller & Heckman or to Defendant Behr or to Defendant Jones Day, and did not authorize their access to restricted areas of the Website. Only Dr. Egilman could provide authorization.

D. **DEFENDANTS USE THE ILLEGALLY OBTAINED MATERIALS TO GAIN UNFAIR ADVANTAGE IN LITIGATION**

21. The Defendants used information from the restricted areas of Dr. Egilman's Computer for their own commercial gain, for the commercial gain of their clients, and to the detriment of Dr. Egilman and his clients.

22. Among the pages the Defendants printed from restricted areas of Dr. Egilman's Computer were documents authored by Dr. Egilman, including the demonstrably false item Dr. Egilman placed on the Website as a marker.

23. At the time of the Defendants' unauthorized access, Dr. Egilman's Website content was inaccessible without the username/password combination because Dr. Egilman had restricted access to comply with a protective order in the beryllium litigation. By using the unauthorized username/password combination, Defendants illegally accessed Dr. Egilman's Computer and printed certain pages. Defendant Jones Day then presented the illegally obtained pages to the Colorado court in the beryllium litigation. Defendant Jones Day did not inform the Colorado court that they had obtained the pages through illegal access to Dr. Egilman's Website. Based on the publication of the illegally-obtained documents to the Colorado court, the court in the beryllium litigation ruled that Dr. Egilman had violated the protective order and instructed the jury to disregard his testimony. The Colorado court also imposed sanctions against Dr.

VERIFIED COMPLAINT

Egilman. Dr. Egilman incurred substantial legal fees in his successful appeal to overturn the sanctions.

24. The Defendants also published illegally-obtained documents to the Texas court through ex parte communication in the VCM litigation

COUNT 1

Violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030

25. Paragraphs 1 through 24 are realleged and incorporated herein by reference.

26. The computer on which Dr. Egilman hosts his website is a "protected computer" as defined in 18 U.S.C. § 1030 (e)(2).

27. Defendants knowingly and with intent to defraud Dr. Egilman, obtained, used and transferred an unauthorized username/password combination.

28. Defendants' actions caused Dr. Egilman damages in excess of \$5,000.

COUNT II

Violation of the Digital Millennium Copyright Act of 1998, 17 U.S.C. 1201 *et seq.*

29. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

30. Dr. Egilman restricted access to copyright-protected work on Dr. Egilman's Computer.

31. Defendants circumvented the technical measures Dr. Egilman installed on his website to restrict access to his copyright protected work.

32. Defendants' actions caused Dr. Egilman damages in excess of \$5,000.00.

VERIFIED COMPLAINT

COUNT III
Common Law Claims

33. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

34. Defendants knowingly gained access to Dr. Egilman's Computer without the effective consent of the owner, and removed confidential information from Dr. Egilman's Computer, in violation of the laws of the District of Columbia and the States of Massachusetts and Texas. Defendants have further, individually and acting in concert with each other, engaged in trespass to personal property.

35. Defendants' actions caused Dr. Egilman damage to his reputation, with resulting economic damages in amount to be proven at trial.

RELIEF

36. Plaintiff requests that this Court award him damages in an amount as yet unascertained but no less than \$250,000, including but not limited to the following:

a. On Count I, damages in excess of \$5,000, to be proven at trial, including the access fees the Defendants avoided by obtaining unauthorized access to Dr. Egilman's Computer;

b. On Count II, actual damages, the Defendants' profits from unauthorized use of Dr. Egilman's work, and statutory damages up to \$2,500 per act of circumvention;

c. On Count III, economic damages in an amount to be proven at trial;

d. Exemplary damages;

e. Costs, expenses and attorney fees; and

f. Such other relief as the Court deems just and proper.


VERIFIED COMPLAINT

VERIFICATION

I affirm under the penalties for perjury that the foregoing statements in the Verified Complaint are true.


David Egilman, MD, MPH

Respectfully submitted,


Cheryl A. Maier, DC Bar No. 425523 ✓
KING, PAGANO & HARRISON
1730 Pennsylvania Ave, N.W., Suite 900
Washington, DC 20006
(202) 371-6800
(202) 371-6770 (fax)

Counsel for David Egilman

VERIFIED COMPLAINT