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THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SHERWOOD 48 ASSOCIATES, SUPER)
SIGN COMPANY, JAMESTOWN ONE)
TIMES SQUARE, L.P., OTS SIGNS, L.P.,)
SHERWOOD 1600 ASSOCIATES, and)
BROADWAY MEDIA LLC,)

Plaintiffs,)

v.)

Civil Action No.: 02-CV-2746 (RO)

SONY CORPORATION OF AMERICA;)
SONY PICTURES ENTERTAINMENT,)
INC.; SONY PICTURES DIGITAL)
ENTERTAINMENT, INC.; COLUMBIA)
TRISTAR FILM DISTRIBUTORS)
INTERNATIONAL, INC.; and SONY)
PICTURES RELEASING CORP.,)

Defendants.)

FIRST AMENDED COMPLAINT

Plaintiffs Sherwood 48 Associates, Super Sign Company, Jamestown One Times Square, L.P., OTS Signs, L.P., Sherwood 1600 Associates and Broadway Media, LLC (collectively referred to herein as "Plaintiffs") allege the following for their Complaint against Defendants Sony Corporation of America, Sony Pictures Entertainment, Inc., Sony Pictures Digital

Entertainment, Inc., Columbia Tristar Film Distributors International, Inc., and Sony Pictures Releasing Corp. (collectively referred to herein as “Defendants”):

SUBSTANCE OF THE ACTION

1. This is an action at law and in equity for unfair competition, deceptive trade practices, and trespass arising under the federal Lanham Act, 15 U.S.C. §1051 *et seq.*, the New York deceptive trade practices statutes, N.Y. Gen. Bus. Law §349 *et seq.*, and the common law.

THE PARTIES

2. Plaintiff Sherwood 48 Associates is a limited partnership registered to do business in the State of New York with a principal place of business at 745 Fifth Avenue, Suite 1707, New York, New York 10151.

3. Plaintiff Super Sign Company is a general partnership registered to do business in the State of New York with a principal place of business at 745 Fifth Avenue, Suite 1707, New York, New York 10151.

4. Plaintiff Jamestown One Times Square, L.P. is a limited partnership registered to do business in the State of New York with a principal place of business at 2727 Paces Ferry Road, Suite 1600, Atlanta, Georgia 30339.

5. Plaintiff OTS Signs, L.P. is a limited partnership registered to do business in the State of New York with a principal place of business at 111 Eighth Avenue, New York, New York 10011.

6. Plaintiff Sherwood 1600 Associates is a limited partnership registered to do business in the State of New York with a principal place of business at 745 Fifth Avenue, Suite 1707, New York, New York 10151.

7. Plaintiff Broadway Media LLC is a limited liability company registered to do business in the State of New York with a principal place of business at 745 Fifth Avenue, Suite 1707, New York, New York 10151.

8. Defendant Sony Corporation of America ("SCA") is a New York corporation with its principal place of business located at 550 Madison Avenue, New York, New York 10022. SCA may be served with process through its registered agent, Kenneth L. Ness, at the foregoing address.

9. Defendant Sony Pictures Entertainment, Inc. ("SPE") is a Delaware corporation with its principal place of business located at 10202 W. Washington Blvd., Culver City, California 90232. SPE is registered to do business in the State of New York and may be served with process through its registered agent, Prentice-Hall Corporation System, Inc., at 80 State Street, Albany, New York 12207.

10. Defendant Sony Pictures Digital Entertainment, Inc. ("SPDE") is a Delaware corporation with its principal place of business located at 10202 W. Washington Blvd., Culver City, California 90232. SPDE may be served with process at the foregoing address.

11. Defendant Columbia Tristar Film Distributors International, Inc. ("CTFD") is a California corporation with its principal place of business located at 10202 W. Washington Blvd., Culver City, California 90232. CTFD is registered to do business in the State of New York and may be served with process through its registered agent, Prentice-Hall Corporation System, Inc., at 80 State Street, Albany, New York 12207.

12. Defendant Sony Pictures Releasing Corp. ("SPR") is a Delaware corporation with its principal place of business located at 10202 W. Washington Blvd., Culver City, California

90232. SPR is registered to do business in the State of New York and may be served with process through its registered agent, Prentice-Hall Corporation System, Inc., at 80 State Street, Albany, New York 12207.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this dispute under section 39 of the Lanham Act, 15 U.S.C. §1121, under 28 U.S.C. §§1331, 1338(a), 1338(b), and 1367, and by reason of the doctrine of pendent jurisdiction. The amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

14. This Court has personal jurisdiction over the Defendants because Defendants are registered to do business in the State of New York and/or conduct business within the State of New York, including this District, and because a substantial part of the events or omissions giving rise to the claims herein occurred within this District.

15. Venue is appropriate in this District pursuant to 28 U.S.C. §§1391(b) and 1391(c) because, among other reasons, each of the Defendants resides in the State of New York and because a substantial part of the events or omissions giving rise to the claims herein occurred within this District.

FACTS COMMON TO ALL CLAIMS

PLAINTIFFS

16. Plaintiff Jamestown One Times Square, L.P. is the owner of the famous One Times Square building in New York City. Plaintiff OTS Signs, L.P. licenses advertising space on One Times Square. Jamestown One Times Square, L.P. and OTS Signs, L.P. will be referred to collectively as "Jamestown."

17. Plaintiff Sherwood 48 Associates is the owner of the famous Two Times Square building in New York City. Plaintiff Super Sign Company licenses advertising space on Two Times Square. Sherwood 48 Associates and Super Sign Company will be referred to collectively as “Sherwood 48.”

18. Plaintiff Sherwood 1600 Associates is the owner of the famous 1600 Broadway building in New York City. Plaintiff Broadway Media LLC licenses advertising space on 1600 Broadway. Sherwood 1600 Associates and Broadway Media LLC will be referred to collectively as “Sherwood 1600.”

19. Plaintiffs herein thus license more than forty (40) sign properties located on the three (3) landmark Times Square buildings – namely, One Times Square, Two Times Square and 1600 Broadway. This block of signs, which encompasses approximately thirty percent of all signage in Times Square, includes the majority of the most visible, most spectacular, and most expensive signs in the world.

TIMES SQUARE

20. One Times Square is located between 42nd Street and 43rd Street and between Seventh Avenue and Broadway, in the heart of New York’s Times Square. Two Times Square is located between 47th Street and 48th Street and between Seventh Avenue and Broadway, facing One Times Square. 1600 Broadway is located on the northern end of Times Square, near the intersection of Broadway and Seventh Avenue, adjacent to Two Times Square. One Times Square and Two Times Square are the “bookends” that anchor Times Square. Standing in the center of Times Square facing north, 1600 Broadway can be seen “framing” Two Times Square on either side, as 1600 Broadway sits behind Two Times Square.

21. Because of its central location, Times Square is often described as the “crossroads of the world.” An estimated 35 million tourists visit Times Square annually and over 450 million pedestrians walk through Times Square each year. Indeed, public interest in Times Square is sufficiently strong that some Internet websites, such as the one found at www.earthcam.com/usa/newyork/timessquare, feature live images of Times Square on a continuous basis.

22. Times Square is a world famous, historic venue. In addition to the millions of pedestrians and tourists who visit Times Square annually, Times Square also provides the backdrop for countless movies, television programs, television commercials, music videos, photographs, books, print advertisements, postcards and prominent events such as the Macy’s Thanksgiving Day Parade, Broadway on Broadway, and the annual New Year’s Eve celebration. These vehicles, in conjunction with the pervasive souvenir merchandising related to Times Square, provide Times Square with unparalleled and incalculable global exposure.

23. Times Square is featured prominently in such current television programs as “Good Morning America”, “20/20”, and “NBC Nightly News with Tom Brokaw”. Indeed, both ABC and MTV recently constructed new studios that overlook Times Square. The networks broadcast many programs from these studios, several on a daily basis. These programs highlight, rely upon, and celebrate Times Square and its distinctive character.

24. As is well known, Times Square has been the center of worldwide attention on New Year’s Eve since 1904. The famous ball-lowering celebration, which takes place on One Times Square, has become a universal symbol of the New Year.

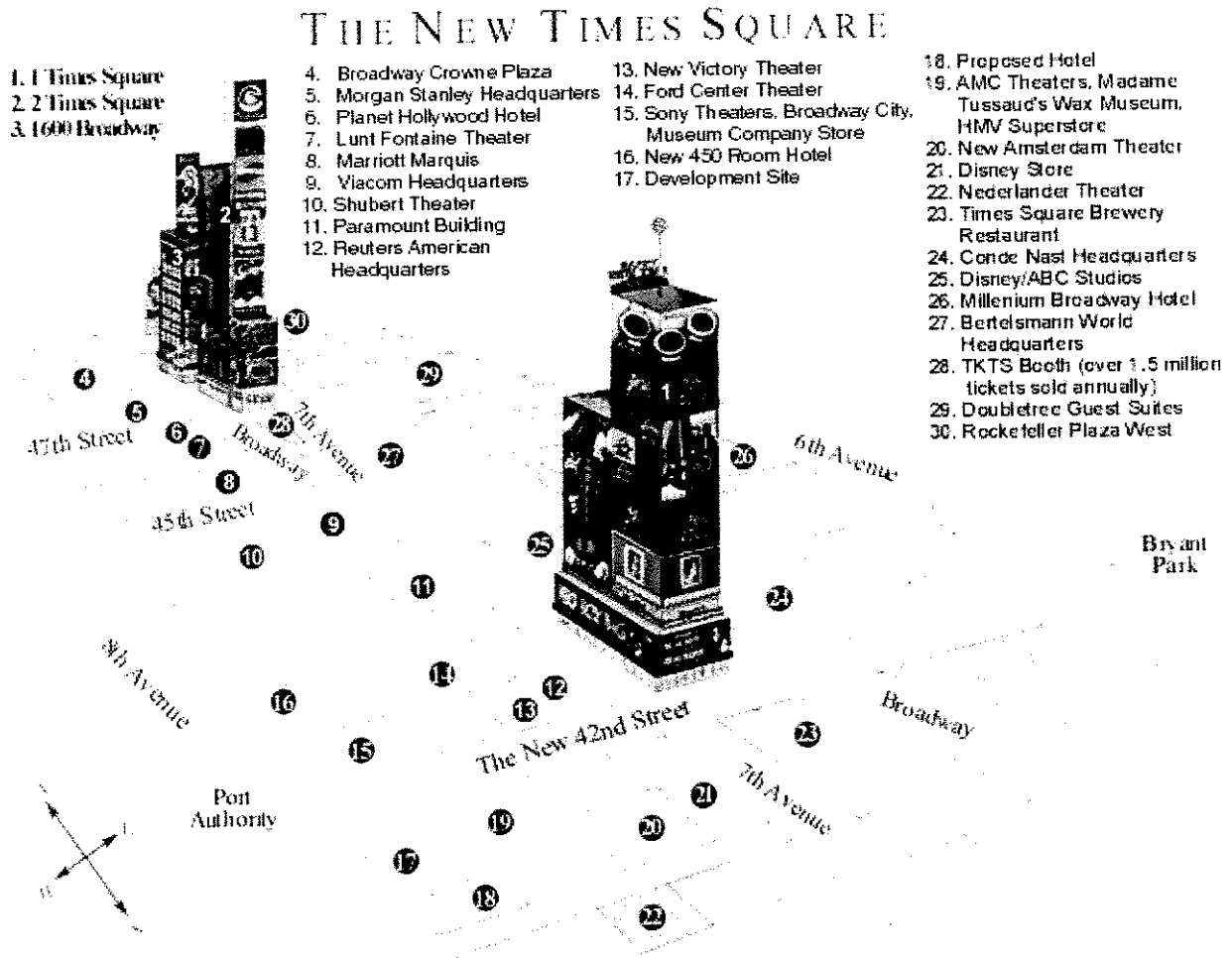
25. The New Year's Eve celebration in Times Square is the most watched New Year's Eve celebration in the world. The celebration generates considerable public interest and media attention. As such, One Times Square has its own sponsors for the ball-lowering celebration. These sponsors include Panasonic, Korbel Champagne, Waterford Crystal, Doubletree Hotels and Con Edison.

26. An estimated 500,000 people attended the most recent New Year's Eve event in Times Square. More than an estimated one billion people watched the ball's descent on television broadcasts throughout the world.

27. Every major U.S. television network, including ABC, CBS, NBC, FOX, MTV, and Univision, present live television broadcasts of the New Year's Eve celebration in Times Square.

ONE TIMES SQUARE, TWO TIMES SQUARE AND 1600 BROADWAY

28. One Times Square, Two Times Square, and 1600 Broadway are the most prominent buildings in Times Square. The location of the buildings is shown below:



29. One Times Square, Two Times Square and 1600 Broadway are three of the world's most famous and most recognized buildings. Simply put, these buildings are the premier advertising locations in the world. One Times Square, Two Times Square and 1600 Broadway

are recognized throughout the country and the world due to the New Year's Eve celebration as shown on television. One Times Square, Two Times Square and 1600 Broadway also are recognized due to their repeated exposure in movies, television programs, television commercials, music videos, photographs, print advertisements, postcards, webcams, souvenirs and other events and mediums.

30. Because of the high profile and the central location of One Times Square, Two Times Square and 1600 Broadway, advertising space on the buildings and association with the buildings is highly desirable. Indeed, the most prominent and most expensive signs in the world are located on One Times Square, Two Times Square and 1600 Broadway. Plaintiffs license advertising space on One Times Square, Two Times Square and 1600 Broadway. Advertisers license space from Plaintiffs on One Times Square, Two Times Square and 1600 Broadway not only as a result of the prestige and the favorable connotations associated with the buildings, but also because the images of the buildings and the signs will be seen by billions of television viewers, Internet users, movie goers, magazine and book readers, and others during the course of their contracts with Plaintiffs. Advertisers depend on the fact that their signs will not only be seen by the hundreds of millions of people who pass through Times Square every year but also on the residual impact of their signs appearing in photographs, newspapers, magazines, TV shows, movies, and elsewhere.

31. One Times Square, Two Times Square and 1600 Broadway are truly unique, one-of-a-kind advertising venues. The advertising impact and value attributed to advertising on One Times Square, Two Times Square and 1600 Broadway has been publicly reported on many occasions in recent years. *See* Articles attached hereto as Exhibit A.

32. The commercial advantages of association with One Times Square, Two Times Square and 1600 Broadway are such that Plaintiffs routinely receive requests from major corporations seeking to affiliate themselves with One Times Square, Two Times Square, 1600 Broadway and Plaintiffs.

33. As is shown below, advertisers on One Times Square have included Anheuser-Busch, NBC, Panasonic, Discover Card, and Nissin:



34. As is shown below, purchasers of advertising space on Two Times Square have included The Coca-Cola Company, The Prudential Insurance Company of America, Suntory Limited, Samsung Electronics America, Inc., and General Motors:



35. As is shown above, purchasers of advertising space on 1600 Broadway have included Nokia and NBC.

DISCOVER CARD

36. The “Discover Card” sign of NOVUS Services, Inc. (Morgan Stanley) occupies one of the highest profile and most visible locations on One Times Square, facing North into Times Square. As is shown in paragraph 33, the “Discover Card” sign is 55 feet high by 55 feet wide and is located at the top of One Times Square. The “Discover Card” sign features content provided by NOVUS as well as prominent displays of the “Discover Card” trademark and logo. The “Discover Card” sign, as well as all of the signs on One Times Square, is seen and recognized by millions, if not billions, of people every year.

SAMSUNG

37. The “Samsung Spectacular” sign of Samsung Electronics America, Inc. has occupied one of the highest profile and most visible locations on Two Times Square. As is shown in Paragraph 34, above, the “Samsung Spectacular” sign was 45 feet high by 40 feet wide and was located towards the top of Two Times Square between advertising space used by Prudential and Suntory. The “Samsung Spectacular” sign featured content provided by Samsung as well as prominent displays of the Samsung trademark and logo. The “Samsung Spectacular” sign, as well as all of the signs on Two Times Square, was seen and recognized by millions, if not billions, of people every year. A new, equally prominent sign recently has been installed for Samsung on Two Times Square.

THE SPIDER-MAN MOVIE

38. SCA, through and in conjunction with its subsidiaries SPE, SPDE, CTFD, and SPR, produce, sell, distribute, market, and promote motion pictures in 67 countries worldwide, including but not limited to the motion picture *Spider-Man*. Defendants released and distributed the *Spider-Man* movie to the public on or about May 3, 2002. The *Spider-Man* movie broke several box-office records after its debut on May 3, 2002, including highest three-day, opening weekend gross revenue, shortest time to gross \$200 million, and highest gross revenue for a movie in its third weekend of release.

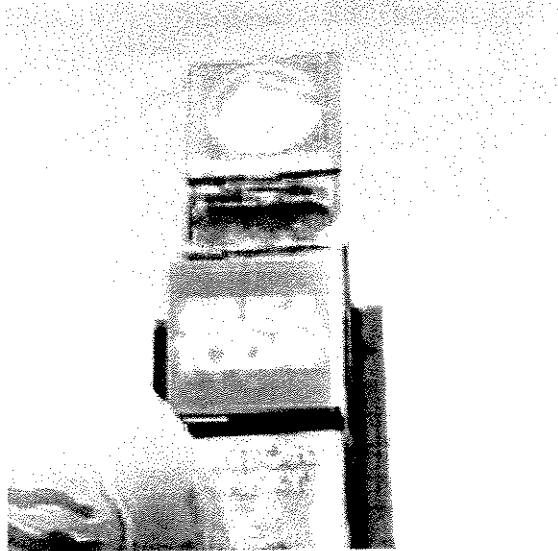
39. SPDE oversees and operates certain on-line activities of Defendants, including, but not limited to, operation of the promotional website for the *Spider-Man* movie. In addition, through its Sony Pictures Imageworks division (“Imageworks”), SPDE operates a state-of-the-art digital character animation and visual effects company that creates computer-generated imaging for motion pictures, including, but not limited to, the *Spider-Man* movie.

40. In advance of the movie’s release, Defendants distributed a two minute, twenty-eight second theatrical trailer for its upcoming release of the movie *Spider-Man*. The trailer can be viewed on the World Wide Web at www.spiderman.sonypictures.com.

41. Two Times Square is prominently pictured in the trailer at three (3) separate times, at approximately 1:20, 1:23-1:24, and 2:17.

42. During these scenes in the trailer, however, Defendants do not depict Two Times Square as it actually appears. Rather, on information and belief, using computer-generated imaging and electronic insertion technology, Defendants digitally superimposed the logo of “USA Today” in the location on Two Times Square where, in reality, the “Samsung Spectacular”

sign appeared. *See* Exhibit B, attached hereto. A copy of a freeze-frame photograph from the *Spider-Man* trailer depicting the altered Two Times Square is shown below:



43. Defendants also digitally altered the appearance of One Times Square and 1600 Broadway in the *Spider-Man* movie trailer. With respect to One Times Square, Defendants “removed” the “Discover Card” sign and replaced it with a sign for Cingular Wireless. Similarly, Defendants “removed” the NBC sign from 1600 Broadway and replaced it with a sign for Kellogg’s Pop-Tarts.

44. Defendants also are running television commercials similar to the theatrical trailer in promotion for the *Spider-Man* movie. Defendants also have altered the appearance of One Times Square, Two Times Square and 1600 Broadway in these commercials in a manner similar to that shown in the trailer.

45. As a result of the digital alteration of One Times Square, Two Times Square and 1600 Broadway made by Defendants, viewers of the movie, the trailer and the commercials would see the “USA Today” logo, “Cingular” logo and/or “Pop-Tarts” logo on the buildings

instead of the advertisements and logos that actually appear on One Times Square, Two Times Square and 1600 Broadway.

46. Unlike the trailers and promotional commercials, the actual *Spider-man* movie does not contain the superimposed “USA Today” sign on Two Times Square. It does, however, contain the superimposed “Pop-Tarts” sign over an NBC sign on 1600 Broadway and the superimposed “Cingular” sign over the “Discover Card” sign on One Times Square. The altered image of One Times Square is displayed prominently on multiple occasions in the movie.

THE CINGULAR WIRELESS AD CAMPAIGN

47. Simultaneously with the promotion and release of the *Spider-man* movie, Cingular Wireless launched an advertising campaign for its wireless telephone services incorporating the Spider-man character. This campaign builds upon the success of the *Spider-man* movie and incorporates elements from the movie.

48. The Cingular Wireless television commercials include an altered depiction of Two Times Square. On information and belief, using computer-generated imaging and electronic insertion technology, Defendants, or someone acting on their behalf or with their permission, digitally superimposed the “Cingular” logo on Two Times Square where, in reality, the “Samsung Spectacular” sign appears.

THE SOLICITATION

49. On information and belief, one or more of Defendants solicited advertising space on One Times Square, Two Times Square and 1600 Broadway. Specifically, Defendants (or someone acting on their behalf) offered to superimpose advertising on One Times Square, Two Times Square and 1600 Broadway in the *Spider-Man* movie, the commercials, and the trailer.

50. Upon information and belief, Defendants solicited and secured agreements with USA Today, Cingular Wireless, Kellogg's and others to superimpose their advertising on One Times Square, Two Times Square and 1600 Broadway in the *Spider-Man* movie, commercials, and trailer.

51. Upon information and belief, Defendants, as part of their cross-promotional agreement with Cingular Wireless in connection with the *Spider-man* movie, "authorized" Cingular Wireless to superimpose its advertising on Two Times Square in Cingular Wireless's advertising campaign.

52. On information and belief, Defendants received consideration for superimposing the "USA Today" logo, the "Cingular" logo, the "Pop-Tarts" logo and perhaps other types of advertising on One Times Square, Two Times Square and 1600 Broadway in the *Spider-Man* movie, the commercials, and the trailer.

THE UNAUTHORIZED ACTS OF DEFENDANTS

53. Plaintiffs have not authorized Defendants or anyone to sell advertising space on One Times Square, Two Times Square or 1600 Broadway, nor have Plaintiffs authorized Cingular Wireless to display its advertising on their buildings in Cingular Wireless's advertising campaign or otherwise.

54. Plaintiffs have not authorized Defendants or anyone to distort the appearance of One Times Square, Two Times Square or 1600 Broadway or present an altered or distorted image to the public in any medium whatsoever.

55. Plaintiffs have not authorized Defendants or anyone to superimpose the "USA Today" logo, the "Cingular" logo, the "Pop-Tarts" logo or other advertising onto One Times

Square, Two Times Square or 1600 Broadway in the *Spider-Man* movie, the *Spider-man* trailer, or commercials for the *Spider-man* movie or other products.

DAMAGE TO PLAINTIFFS

56. Plaintiffs and their affiliates are being damaged by Defendants' distortion and alteration of the advertising on their buildings. Several of the largest corporations in the world currently compete with each other to secure advertising space on One Times Square, Two Times Square and 1600 Broadway. Due to the significant exposure and residual value of the advertisements, One Times Square or Two Times Square or 1600 Broadway often constitutes the centerpiece of a corporation's advertising and branding campaigns. If Defendants' conduct is allowed to continue, it is less likely that major corporations and advertisers will purchase advertising space on One Times Square, Two Times Square, 1600 Broadway, or Plaintiffs' other properties because the amount of exposure and, therefore, the residual value of their advertising will be diminished. Current advertisers also will and do believe that the residual impact of their advertisement as used in movies, television, and other mediums will be and has been reduced. It is less likely that major corporations and advertisers will be willing to pay the premium rates that One Times Square, Two Times Square and 1600 Broadway currently command once the residual value of the advertising is diminished.

57. Moreover, it is more likely that potential advertisers seeking to advertise on One Times Square or Two Times Square or 1600 Broadway will bypass Plaintiffs altogether and attempt to secure "virtual" advertising space on the building in select movies, television programs, photographs and other media for significantly lower rates and without Plaintiffs'

approval or involvement. For example, Sony itself used to be a paid advertiser on One Times Square:



Sony, however, no longer pays to advertise on One Times Square.

58. Current advertisers will and do wrongfully believe that Plaintiffs are selling the same advertising space to different advertisers in different mediums.

59. Current advertisers and the general public will wrongfully believe that the Defendants, Cingular Wireless, USA Today, Kellogg's or others are associated with or that

advertisements thereof are sponsored by Plaintiffs, when in fact no relationship exists. Plaintiffs have no control over the quality or the use of the image of One Times Square, Two Times Square, 1600 Broadway, or the advertising thereon by Defendants, Cingular Wireless, USA Today, Kellogg's or others.

60. Defendants have deprived Plaintiffs of advertising revenue rightfully theirs for advertising space on One Times Square, Two Times Square and 1600 Broadway.

COUNT I

TRADE DRESS INFRINGEMENT

61. Plaintiffs repeat and incorporate by reference the allegations contained in paragraphs 1 through 60 as if fully set forth herein.

62. The design and presentation of the unique configuration and ornamentation of One Times Square and the advertising and signage display on One Times Square are non-functional elements of the building as a whole.

63. The design and presentation of the unique configuration and ornamentation of Two Times Square and the advertising and signage display on Two Times Square are non-functional elements of the building as a whole.

64. The design and presentation of the unique configuration and ornamentation of 1600 Broadway and the advertising and signage display on 1600 Broadway are non-functional elements of the building as a whole.

65. Jamestown has developed significant secondary meaning in the unique configuration and ornamentation of One Times Square and the advertising and signage display on One Times Square. Similarly, Sherwood 48 has developed significant secondary meaning in

the unique configuration and ornamentation of Two Times Square and the advertising and signage display on Two Times Square, and Sherwood 1600 has developed significant secondary meaning in the unique configuration and ornamentation of 1600 Broadway and the advertising and signage display on 1600 Broadway.

66. The unique configuration and ornamentation of One Times Square, Two Times Square and 1600 Broadway and the advertising and signage display on One Times Square, Two Times Square and 1600 Broadway are protectable trade dress.

67. Defendants' superimposition of the "USA Today" logo, the "Cingular" logo, the "Pop-Tarts" logo and other advertising onto One Times Square, Two Times Square and 1600 Broadway is likely to cause confusion, deception, and mistake as to the origin or source of the altered building and/or the advertising and signage display thereon.

68. Defendants' conduct amounts to an infringement of the nonfunctional trade dress of One Times Square, Two Times Square and 1600 Broadway and the advertising and signage display on One Times Square, Two Times Square and 1600 Broadway pursuant to 15 U.S.C. §1125(a).

69. Defendants' conduct has irreparably damaged Plaintiffs and will continue to damage irreparably Plaintiffs unless enjoined by this Court, as a result of which Plaintiffs are without an adequate remedy at law.

70. On information and belief, Defendants performed the aforesaid acts with knowledge and in disregard of Plaintiffs' rights. Defendants' conduct demonstrates an intentional, willful, and bad faith intent to trade on the goodwill associated with Plaintiffs and with One Times Square, Two Times Square and 1600 Broadway.

71. Defendants' conduct is causing, and is likely to cause, substantial injury to the public and to Plaintiffs.

COUNT II

FALSE ENDORSEMENT

72. Plaintiffs repeat and incorporate by reference the allegations contained in paragraphs 1 through 71 as if fully set forth herein.

73. Defendants' superimposition of the "USA Today" logo, the "Cingular" logo, the "Pop-Tarts" logo and other advertising onto One Times Square, Two Times Square and 1600 Broadway is likely to cause confusion, deception, and mistake by creating the false and misleading impression that USA Today, Cingular Wireless, Kellogg's and/or Defendants are affiliated, connected, or associated with Plaintiffs, One Times Square, Two Times Square, 1600 Broadway, or the reverse, or that USA Today, Cingular Wireless, Kellogg's and/or Defendants have the sponsorship, endorsement, or approval of Plaintiffs, One Times Square, Two Times Square or 1600 Broadway.

74. Defendants have made and intend to continue to make false representations of affiliation in violation of 15 U.S.C. §1125(a) that are causing and will continue to cause a likelihood of confusion and deception.

75. Defendants' conduct has irreparably damaged Plaintiffs and will continue to damage irreparably Plaintiffs unless enjoined by this Court, as a result of which Plaintiffs are without an adequate remedy at law.

76. On information and belief, Defendants performed the aforesaid acts with knowledge and in disregard of Plaintiffs' rights. Defendants' conduct demonstrates an

intentional, willful, and bad faith intent to trade on the goodwill associated with Plaintiffs, One Times Square, Two Times Square and 1600 Broadway.

77. Defendants' conduct is causing, and is likely to cause, substantial injury to the public and to Plaintiffs.

COUNT III

FEDERAL UNFAIR COMPETITION/PASSING OFF – REVERSE PASSING OFF

78. Plaintiffs repeat and incorporate by reference the allegations contained in paragraphs 1 through 77 as if fully set forth herein.

79. Defendants' conduct with respect to their soliciting and offering for sale advertising space on One Times Square, Two Times Square and 1600 Broadway, in competition with Plaintiffs, is a false or misleading representation as to the source of the goods and services being offered, namely the advertising rights for One Times Square, Two Times Square and 1600 Broadway. Defendants wrongfully are soliciting and selling advertising rights owned by Plaintiffs.

80. Defendants' conduct has irreparably damaged Plaintiffs and will continue to damage irreparably Plaintiffs unless enjoined by this Court, as a result of which Plaintiffs are without an adequate remedy at law.

81. On information and belief, Defendants performed the aforesaid acts with knowledge and in disregard of Plaintiffs' rights. Defendants' conduct demonstrates an intentional, willful, and bad faith intent to compete unfairly with Plaintiffs.

82. Defendants' conduct is causing, and is likely to cause, substantial injury to the public and to Plaintiffs.

COUNT IV

COMMON LAW UNFAIR COMPETITION

83. Plaintiffs repeat and incorporate by reference the allegations contained in paragraphs 1 through 82 as if fully set forth herein.

84. Defendants' conduct with respect to their soliciting and offering for sale advertising space on One Times Square, Two Times Square and 1600 Broadway, in competition with Plaintiffs, amounts to passing off and/or reverse passing off in violation of common law unfair competition.

85. Defendants' conduct has irreparably damaged Plaintiffs and will continue to damage irreparably Plaintiffs unless enjoined by this Court, as a result of which Plaintiffs are without an adequate remedy at law.

86. On information and belief, Defendants performed the aforesaid acts with knowledge and in disregard of Plaintiffs' rights. Defendants' conduct demonstrates an intentional, willful, and bad faith intent to compete unfairly with Plaintiffs.

87. Defendants' conduct is causing, and is likely to cause, substantial injury to the public and to Plaintiffs.

COUNT V

DECEPTIVE TRADE PRACTICES

88. Plaintiffs repeat and incorporate by reference the allegations contained in paragraphs 1 through 87 as if fully set forth herein.

89. Defendants have engaged in deceptive trade practices within the meaning of the New York deceptive trade practices statutes, N.Y. Gen. Bus. Law §349 *et seq.*, by doing the

following: (1) passing off its goods and services as being associated with Plaintiffs; (2) causing a likelihood of confusion or misunderstanding as to the source, origin, or sponsorship of USA Today's, Cingular Wireless's, Kellogg's and/or Defendants' goods and services; (3) causing a likelihood of confusion or misunderstanding as to the affiliation, connection, or association of USA Today, Cingular Wireless, Kellogg's and/or Defendants with Plaintiffs; and (4) engaging in other conduct that similarly creates a likelihood of confusion or misunderstanding of the trade and public.

90. Defendants' alteration of the appearance of One Times Square, Two Times Square and 1600 Broadway is causing and is likely to cause substantial injury to the public and to Plaintiffs, and Plaintiffs have no adequate remedy at law and are entitled to injunctive relief and to recover their costs and reasonable attorneys' fees in accordance with N.Y. Gen. Bus. Law §349.

COUNT VI

DILUTION AND INJURY TO BUSINESS REPUTATION

91. Plaintiffs repeat and incorporate by reference the allegations contained in paragraphs 1 through 90 as if fully set forth herein.

92. Defendants' use of a copy, variation, simulation or colorable imitation of Plaintiffs' trade dress and electronic alteration of the appearance of One Times Square, Two Times Square and 1600 Broadway has caused and will continue to cause the dilution of the distinctive quality of Plaintiffs' trade dress and to injure Plaintiffs' business reputation. By reason of the foregoing, Plaintiffs are entitled to injunctive relief under New York General Business Law §360-1.

93. Defendants' conduct has caused and will continue to cause irreparable injury to Plaintiffs unless enjoined by this Court, as a result of which Plaintiffs are without an adequate remedy at law.

COUNT VII

ELECTRONIC PIRACY/TRESPASS

94. Plaintiffs repeat and incorporate by reference the allegations contained in paragraphs 1 through 93 as if fully set forth herein.

95. Plaintiffs have not authorized Defendants to solicit and offer for sale advertising space on One Times Square, Two Times Square or 1600 Broadway in any medium, including electronic or digital media, nor have Plaintiffs authorized Cingular Wireless to display its advertising on their buildings in Cingular Wireless's advertising campaign or otherwise.

96. By electronically altering the appearance of One Times Square, Two Times Square and 1600 Broadway, Defendants have appropriated the electronic advertising rights in One Times Square, Two Times Square and 1600 Broadway for themselves and hence have trespassed upon the property of Plaintiffs.

97. On information and belief, Defendants acted with full knowledge of Plaintiffs' rights and without regard to the damage to the value of Plaintiffs' property caused by Defendants' conduct.

98. As a result of Defendants' unauthorized conduct, Plaintiffs have lost advertising revenue to which they are rightfully entitled.

99. Plaintiffs have been damaged in an amount not yet determined or ascertainable but equivalent to the revenue earned by Defendants as a result of their unauthorized conduct plus the revenues Plaintiffs may lose as a result Defendants' conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

1. That Defendants, their officers, directors, partners, affiliates, subsidiaries, agents, and employees, and all persons in active concert or participation with Defendants, jointly and severally, be permanently enjoined and restrained from:
 - a. manipulating the appearance of One Times Square, Two Times Square, 1600 Broadway, or any other property owned by Plaintiffs or their affiliates in any manner, including in any motion picture, television program, theatrical trailer, or advertisement;
 - b. inserting advertisements onto One Times Square, Two Times Square, 1600 Broadway, or any other property owned by Plaintiffs or their affiliates in any manner, including in any motion picture, television program, theatrical trailer, or advertisement;
 - c. falsely representing that Defendants or any other party have a relationship with Plaintiffs when they do not in fact have such a relationship;
 - d. falsely representing that Defendants or any other party have the right to solicit and offer for sale advertising space on One Times Square, Two Times Square, 1600 Broadway, or any other property owned by Plaintiffs

or their affiliates in any medium when they do not in fact have such a right;

- e. obscuring or altering, in any way, the advertisements placed on One Times Square, Two Times Square, 1600 Broadway, or any other property owned by Plaintiffs or their affiliates by Plaintiffs' legitimate advertisers; and
- f. otherwise creating, distributing, or displaying false, distorted, or altered images of One Times Square, Two Times Square, 1600 Broadway, or any other property owned by Plaintiffs or their affiliates.

2. That an accounting be ordered and a judgment be rendered against the Defendants, jointly and severally, for all profits and unjust enrichment received, directly or indirectly, in connection with Defendants' superimposition of a "USA Today" logo, "Cingular" logo, the "Pop-Tarts" logo or any other advertisements, on One Times Square, Two Times Square, 1600 Broadway, or any other property owned by Plaintiffs or their affiliates in the *Spider-Man* movie, commercial, or trailer; any other movie, commercial, trailer; or otherwise.

3. That judgment be rendered against Defendants, jointly and severally, for all profits lost by Plaintiffs, directly or indirectly, as a result of Defendants' superimposition of a "USA Today" logo, "Cingular" logo, "Pop-Tarts" logo or any other advertisements, on One Times Square, Two Times Square, 1600 Broadway, or any other property owned by Plaintiffs or their affiliates in the *Spider-Man* movie, commercial, trailer; any other movie, commercial, or trailer; the Cingular Wireless advertising campaign; or otherwise.

4. That Defendants be ordered to pay Plaintiffs three (3) times the damages suffered by Plaintiffs by reason of Defendants' willful, unlawful actions as set forth herein.

5. That Defendants be required to pay punitive damages by reason of Defendants' willful, unlawful actions as set forth herein

6. That Defendants be required to deliver up for destruction all advertising and promotional materials, including the commercials and trailers, that reflect the distortion or alteration of Plaintiffs' One Times Square, Two Times Square, 1600 Broadway, or any advertising on those buildings or any other property owned by Plaintiffs or their affiliates.

7. That Defendants be required to use their best efforts to recall from third parties all advertising and promotional materials, including copies of the commercials and trailers, that reflect the distortion or alteration of Plaintiffs' One Times Square, Two Times Square, 1600 Broadway, or any advertising on those buildings or any other property owned by Plaintiffs or their affiliates.

8. That Defendants be directed to file with the Court and serve on Plaintiffs, within thirty (30) days after entry of a final injunction, a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the injunction.

9. That Plaintiffs have and recover their costs and reasonable attorneys' fees and expenses.

10. That Plaintiffs be awarded interest, including pre-judgment interest, on the foregoing sums.

11. That Plaintiffs have such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 13, 2002



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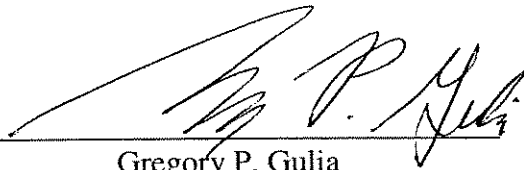
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Motion for admission *pro hac vice* to be submitted

CERTIFICATE OF SERVICE

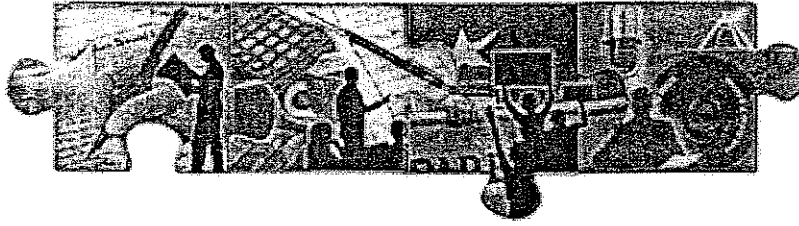
The undersigned hereby certifies that he caused a copy of the foregoing FIRST AMENDED COMPLAINT, LOCAL RULE 1.9 STATEMENT OF PLAINTIFFS and CIVIL COVER SHEET to be served on defendants by first-class mail, postage prepaid, to their attorneys, Bruce P. Keller, Esq. and Michael R. Potenza, Esq. of Debevoise & Plimpton, 919 Third Avenue, New York, New York 10022, this 13th day of June, 2002.



Gregory P. Gulia

NY133437.1

PSA Bibliography



For Outdoor Advertising, Size Really Does Matter

Media Week

Outdoor's value has been a well kept secret among advertisers who, since 1993, have steadily pushed revenue higher. But now the secret's out and radio wants in.

Radio companies have been buying, and merging with, outdoor companies at full speed for the past two years. The trend started with Infinity (before it merged with CBS), which bought Transportation Displays Inc. in 1996, followed by Clear Channel's purchase of Eller Media and Universal Outdoor in 1997. Then AMFM (as Chancellor Media) picked up Martin Media and Whiteco, to create Chancellor Outdoor. Last May CBS strengthened its outdoor presence by purchasing top ranked Outdoor Systems in a deal valued at \$8.3 billion, while AMFM sold its outdoor company to Lamar Advertising, retaining a 30 percent interest. Today, the top four outdoor companies, Outdoor Systems, Eller Media, Lamar Advertising/Chancellor Outdoor and TDI are either owned by or have alliances with radio companies and command more than half (53 percent) of the total outdoor revenue.

How the radio companies plan to exploit these holdings remains to be seen. So far, the synergy between the two media is largely untapped, and sales forces remain separate. CBS, which hasn't closed on its acquisition of Outdoor Systems, has struck a few cross-media deals with companies such as Penzoil and Fidelity Investments, but those deals are the exception rather than the rule. "They're at the 'let's buy it and then figure out what to do with it' stage. "It just hasn't happened yet," says Diane Cimino, executive vice president of the Outdoor Advertising Association of America. Ultimately, she says, "it can be a great one-two punch to reach consumers out of home and on the go. You see it, you hear it."

But the reason for radio's buying spree is obvious. Since 1993, outdoor ad revenue has steadily increased by high single digits; 1999 and 2000 are expected to follow the trend. Last year, outdoor posted a healthy 9 percent gain to \$2.3 billion, according to the OAAA. Through May, outdoor advertising was up a healthy 7.5 percent, with 1999 revenue forecasted to gain more than 8 percent and 2000 to increase by more than 9 percent to \$2.75 billion. By 2002, Veronis, Subler & Associates estimates outdoor will bring in \$3.2 billion in revenue.

Synergies between outdoor and radio aside, outdoor advertising is increasingly good business. The industry has finally overcome its reputation for "booze and butts." In 1979, tobacco advertising was 39 percent of revenue and alcohol was 19 percent.

That's dwindled to 11 percent for tobacco and 2 percent for alcohol. "Now it's everything else but those categories," says Cimine. "The whole face of outdoor has changed dramatically."

Big users of outdoor run the gamut from local services and amusements, to public transportation, to hotels and resorts, with retailers each contributing about 10 percent of ad dollars. One of the fastest growing categories is movie studios, videos and video stores, broadcast networks, newspapers, and radio stations which accounts for about 8 percent of the revenue. Radio has increased its outdoor spending by more than 25 percent this year.

More and more, fashion is dressing up outdoors. Gap, Calvin Klein, Ralph Lauren and DKNY dot major-market skylines, and some pay upwards of \$100,000 monthly for ads in Times Square and along Los Angeles' Sunset Boulevard, reports Horizon Media.

Like other media, outdoor has also benefited from the Internet and dot.com related businesses, with companies such as Amazon.com, Excite, and motherearth.com using outdoor to brand their names and drive traffic to their Web sites. "It's shaping up to be our second largest advertising category," notes Jodi Yegelwel, executive vice president of marketing for transit ad powerhouse TDI.

With demand for outdoor space on the rise, outdoor companies are pushing up rates. "There is a great opportunity to make rates comparable to other media outlets," says Cimine. But, "it hasn't happened yet. It's still a fabulous buy." In the millennium year, there will be added pressure on outdoor rates from political advertising and the Olympics, she says.

Even though outdoor is only a tiny 2 percent of overall ad spending, its effect is growing, particularly in one-of-a-kind locations such as Times Square and Sunset Boulevard, where exposure is impossible to calculate. Signs there can pop up on the news, in movies and in magazines, and that doesn't even take into consideration the millions who walk through the areas weekly. "We can't even tell an advertiser how many impressions they are getting," says Brian Turner, president of Sherwood Outdoor, which sells 60 site "spectaculars" at One and Two Times Square and 1600 Broadway, making it the 12th largest outdoor company in terms of revenue.

A wide range of advertisers Coca Cola, General Motors' Cadillac division, Samsung, Prudential, NBC, Budweiser, New York State Lottery, even The New York Times pay six-figure monthly rates to hold space for 10 years, a far cry from the days when the signs used to turn over every six months. Times Square is so much in demand that Inter City is building a 50 story hotel and 300foot tower at Broadway and 47th Street that, when completed in November, will accommodate a total of 75,000 square feet of outdoor advertising. "[The tower] is the largest structure ever built exclusively for advertising," says Bob Nyland, president of Inter City. Premiere advertisers include American Express, Apple, AT&T, HBO, Hachette Filipacchi, Levi's, Morgan Stanley, Nokia and the U.S. Postal Service.

And to make sure they stand out in the crowd, these ads are not your father's billboards. "We are morphing our products," says TDI's Yegelwel. In Chicago, TDI

wrapped a two car, 96 foot long commuter train with Washington Mutual's ad message. And no space is left uncovered. In New York's World Trade Center, TDI helped Dodge take over every possible space of the rail station floors, walls, posters, banners, escalators to create a single exhibit.

"We've had requests for moving, smoking and smelling boards," says Pat Punch, who is a co-owner of Minneapolis-based Atomic Props, a company that specializes in unique spectaculars.

For Poland Springs, Atomic Props created a 30 foot water bottle. Jell-O in Times Square serves up a giant spoon with 4,000 smaller spoons. In Minneapolis, home base for Target, people look forward to a new three dimensional billboard object every month, such as Old Faithful, complete with spray every 10 minutes, which symbolizes Target's donation to the nation's parks. Minneapolis retailer Dayton-Hudson once had three dimensional boxes of candy that emanated a mint scent. Says Punch: "Over the last 10 years, our business has tripled as people see the possibilities."





Times Square Signs: For the Great White Way, More Glitz

New York Times, September 1, 1996
by JOHN HOLUSHA

Mickey Mouse is going up on 42d Street, a larger video screen will replace Sony's Jumbotron at the south end of Times Square and even the Port Authority of New York and New Jersey is planning to get into the act.

Signs in the Times Square area are as numerous as any time in recent memory and gaudier than ever. With the benefit of new technology, they add glitz to an area that is rapidly losing its reputation for crime, pornography and loiterers. Indeed, the signs are required by city zoning rules that are intended to preserve the area's character as an entertainment district.

It is also looking less like the Ginza section of Tokyo as American companies are returning to the area and displacing some of the Japanese companies that dominated in the early 90's. With the decline in their home economy, fewer Japanese companies are eager to rent expensive real estate, and their place has been taken by apparel companies like Liz Claiborne, Levi's jeans, Tommy Hilfiger and corporate titans like AT&T.

"We've got Budweiser beer, which had not been in Times Square in 50 years," said Jeffrey Katz, the president of Sherwood Equities, which controls One Times Square and Two Times Square. The buildings -- One the empty office tower at 42d Street and Broadway (where the ball is dropped on New Year) and the other, the Ramada Renaissance hotel at 47th Street and Broadway -- are the bookends that anchor Times Square.

Mr. Katz said the Budweiser sign in place on the north end of One Times Square is temporary, and will be replaced by an animated spectacular, as they are known in the trade, to promote the beer company. The Japanese remain, of course, with a sign advertising Nissin Cup of Noodles puffing steam into the air on top of the building's prow.

The steam, by the way, comes from generators in the building, unlike the similar sign for 8 O'Clock coffee at Seventh Avenue and 46th Street with steam supplied by Consolidated Edison.

Mr. Katz said its location made the old Times Tower (the Times moved out in 1913) more useful as a billboard than an office building. "Users of office space want 30,000 square foot baseplates and this building has 5,000 square foot floors," he said. "But it is very visible, so we are going to have signs on the north end and south end and we are studying what to do with the east and west sides." Recently, a temporary sign promoting a movie was draped on the west side.

Signs can provide a very nice bit of income to a building owner; at least one rents for as much as \$1.2 million a year, according to Gretchen Dykstra, president of the Times Square Business Improvement District.

The Sony Jumbotron, a 32- by 23 1/2-foot screen which went dark in June after an eight-year run, is to be replaced by a 35- by 27-foot animated screen operated by Panasonic and NBC. It will carry programming from the NBC-TV network, its Channel 4 station in New York City, other NBC ventures and public-service announcements by the city, the Times Square B.I.D. and other organizations.

He said that the intention was to lease the interior of the building to a single tenant, probably a company in the entertainment business that can make good use of the retail space on the ground floor.

(Incidentally, it is the operator of the signs on the building, Van Wagner Communications, Inc. that is responsible for preparing and dropping the ball on top of the building on New Year's Eve.)

Signs can change the way an area is viewed. At the north end of Times Square, the Ramada Renaissance bears several spectaculars, including a Coca-Cola bottle with a top that appears to come off, while the upper part of the sign displays alternating symbol for the soft drink and its diet version.

"Those signs at Two Times Square changed the classic orientation of the area," said Ms. Dykstra.

"In the past the most common view was to the south. Now it is more to the north."

Ms. Dykstra said it was clear why advertisers were eager to pay stiff prices to have their corporate images or their products on display near Times Square. "We get 20 million tourists a year and a lot of them are carrying cameras," she said.

"Times Square is the biggest living museum in the world," said Richard Schaps, the president of Van Wagner. "People are constantly taking pictures of each other in front of the signs. The signs are how you demonstrate that you were there."

The implication is that visitors will see the displays not only during their visit, but for years afterward in the background of the snapshots people tend to take of each other in a seemingly exotic locale.

Last week the Artkraft Strauss Sign Corporation began erecting a big sign featuring Mickey Mouse in front of where the Disney store will be situated -- west of Seventh Avenue on the south side of 42d Street. Tama Starr, president of the century-old company said there was a lot more to come.

"My entire neon shop is filled with Disney orders," she said. "They like neon." The company, which manufactures and installs signs and leases and subleases advertising space on buildings, has an agreement to do all the signs on 42d street between Seventh and Eighth Avenues.

Retailers and others along the now-vacant 800-foot strip are being encouraged to think creatively about their signs and, above all, avoid a common look. No mall look, please.

"The idea is to encourage chaos," said Rebecca Robertson, president of the 42d Street Development Project, the state agency in charge of the transformation of the street. "We want a cacophony of signage."

Ms. Robertson said a riot of lights and designs would evoke the raffish spirit of 42d Street and Times Square. "In the good times and bad, this has been an entertainment area since the turn of the century," she said. "We set the basic outlines, such as the level of illumination, and then let each individual tenant figure their own expression."

Eventually, the new signs will march westward to the east side of Eighth Avenue. And operators of the Port Authority bus terminal on the west side of the avenue south of 42d Street say they plan to hang signs on the open steel framing of the upper two floors where buses load and unload passengers.

Starting this spring, they expect to build a grid on the building, so displays can be attached without disrupting the ventilation function of the open framework.

"We think this is a useful place to put signage, both to generate revenues for the Port Authority and to make the area lighter and brighter," said Ernesto Butcher, director of tunnels, bridges and terminals for the bistate authority.

He said the agency had signed a agreement with Transportation Displays Inc. to market the location but that no deals had been closed as yet. Mr. Butcher said the Port Authority was less interested in plain billboards than lighted, illustrated signs, even if they fall short of being spectaculars. "We want signs that are brightly lit and in keeping with a 'Times Square never sleeps' atmosphere," he said.

Attitudes toward signs and the Times Square area have varied over time. "When we bought the company in 1979 there were 14 signs in the area and nine of them were empty -- painted over," said Mr. Schaps. The company currently has 35 signs in the same area, which Mr. Schaps said represented about 75 percent of the total.

Even signs that went away are coming back, even if the feature they originally advertised is not. In recent weeks, Newmark & Company, the manager of the Paramount Building at the northwest corner of West 43d Street and Broadway, announced that it would put in a new marquee to replace the one that was removed when the old Paramount Theater was closed for conversion to office space in 1964.

The brightly lit marquee will advertise a restaurant-retail-entertainment establishment to be built by Planet Hollywood International. In addition, a four sided clock near the top of the building will be restored to operating condition and a globe at the very summit will once again be illuminated.

Fashion in signs change with taste and technology, said Ms. Starr of Artkraft Strauss.

"You had a golden age in Times Square after World War I when it was the Great White Way because of all the incandescent lighting," she said. "Then there was another in the 50's based on neon. Then neon went out of fashion in the 70's. Now we are in a new golden age based on computers and new types of lighting."

"We are more sophisticated now, but the object is the same," Ms. Starr added. "It is to convey the excitement and good feeling of a theater district."

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April 26, 2001

Coca-Cola retains Times Square sign, employees view new ad campaign

The world's largest Coca-Cola bottle sign, a landmark in the heart of New York City, will keep its home in Times Square for another decade.

The Coca-Cola Co. (NYSE: KO) announced today that it has signed a new lease agreement with Sherwood Outdoor, the outdoor advertising division of Sherwood Equities, ensuring that Coca-Cola's three-dimensional neon spectacular sign will remain at Two Times Square through 2011.

The animated, 65-foot high, 41-foot wide sign weighs more than 55 tons and features the world's largest Coca-Cola bottle, a 42-foot tall version of the classic contour bottle.

The current lease for advertising space with Sherwood Outdoor expires in November 2001. The new agreement will take effect December 2001.

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Terms of the agreement were not disclosed.

Separately, some 3,000 Atlanta employees of Coca-Cola Co. met today at Philips Arena where they saw the company's new "Life Tastes Good" ad campaign, heard about the company's marketing plans and heard remarks of Jeff Dunn, president of Coke's Americas group.

Coca-Cola stock closed at \$46.90, down \$1.30.

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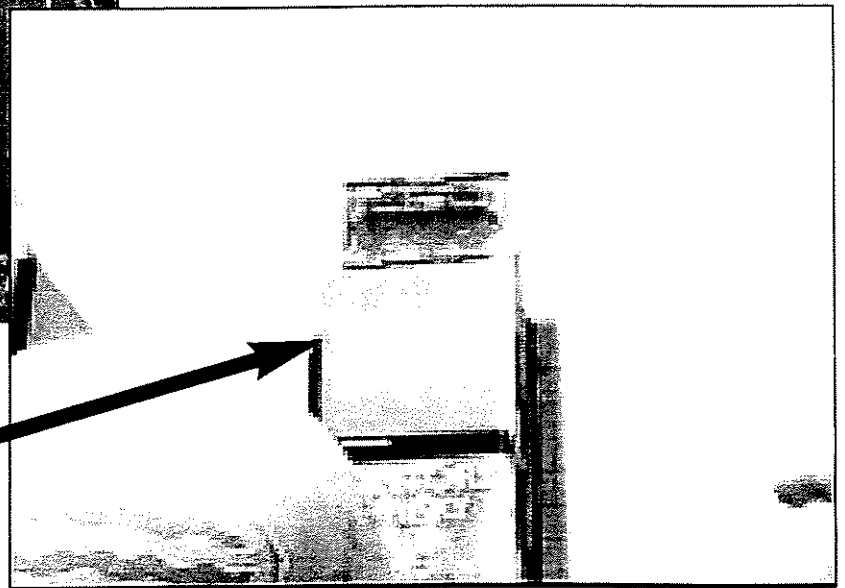
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