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ENDORSED
FILED
Superior Court of California
County of San Francisco

SEP 05 2012

CLERK OF THE COURT
BY: MEREDITH GRIER
Deputy Clerk

6 Attorneys for Plaintiff
7 WIKIMEDIA FOUNDATION, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 UNLIMITED JURISDICTION

11
12 WIKIMEDIA FOUNDATION, INC.,

13 Plaintiff,

14 v.

15 INTERNET BRANDS, INC.,

16 Defendant.

No. CGC-12-523971

COMPLAINT FOR DECLARATORY
JUDGMENT

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18 Comes now, Plaintiff WIKIMEDIA FOUNDATION, INC. ("WIKIMEDIA"), and alleges
19 as follows:

20 INTRODUCTION

21 1. WIKIMEDIA filed this action to prevent defendant Internet Brands, Inc. ("IB")
22 from taking actions designed to impede and suppress WIKIMEDIA's core mission: to empower
23 and engage people around the world to collect and develop educational content under a free
24 license or in the public domain, to disseminate it effectively and globally, and to keep such
25 content available on the internet free of charge, in perpetuity.

26 2. WIKIMEDIA is a nonprofit organization founded in San Francisco and funded
27 primarily through small donations from individuals. Among other things, WIKIMEDIA owns,
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1 operates and promotes the development of "wikis," which as described further below are internet
2 based collaborative reference projects.

3 3. WIKIMEDIA has also developed (and offers for free) an open source software
4 package called MediaWiki which allows anyone a platform to enable users anywhere to develop
5 and disseminate content. By creating MediaWiki and licensing it free of charge, WIKIMEDIA
6 supports the wiki movement and thereby promotes the free and unrestricted sharing of
7 information by volunteers throughout the world.

8 PARTIES

9 4. Plaintiff WIKIMEDIA is a Florida nonprofit corporation with its principal place of
10 business at 149 New Montgomery Street, 3rd Floor, San Francisco, California 94105.

11 5. WIKIMEDIA is informed and believes and on that basis alleges that defendant IB
12 is a Delaware corporation with its principal place of business at 909 Sepulveda Boulevard, 11th
13 Floor, El Segundo, California, 90245. WIKIMEDIA is further informed and believes and on that
14 basis alleges that IB began as the owner and operator of a commercial website devoted to the sale
15 of new and used cars (CarsDirect.com). After several years of aggressive growth, IB now claims
16 to own over 100 websites, each of which is a leader in "high value vertical markets." Private
17 Equity firm Hellman & Friedman Capital Partners recently purchased IB for \$640 million.

18 JURISDICTION AND VENUE

19 6. WIKIMEDIA is informed and believes and on that basis alleges that, at all times
20 relevant to the dispute referenced in this Complaint, IB was and is doing business in the County
21 of San Francisco, in the State of California.

22 7. At all times relevant to the dispute referenced in this Complaint, WIKIMEDIA
23 was and is doing business in the County of San Francisco, in the State of California.

24 8. As a result, this Court has jurisdiction over the parties herein, and venue is proper
25 in the County of San Francisco pursuant to California Code of Civil Procedure Section 395.5.
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FACTUAL BACKGROUND

9. A “wiki” is a website that allows its users to add, modify or delete its content via a web browser. The largest wiki in the world is WIKIMEDIA’s Wikipedia, a free online encyclopedia with over 22 million articles and 100,000 active contributors.

10. In or about July 2003, Evan Prodromou and Michele Ann Jenkins registered the internet domain name www.wikitravel.org and created Wikitravel, a wiki aimed at creating a free, non-commercial and reliable worldwide guide to travel and tourism. Wikitravel operates much like other wikis in that members of the public are permitted and encouraged to review and edit existing content, as well as author entirely new material and post it to the site. That content is then edited, updated, modified and curated by volunteer administrators (most of whom are also authors) who donate their time to ensure the integrity of Wikitravel’s contents. The administrators also ensure that Wikitravel is operating in accordance with website rules, including preventing spam or off topic, inappropriate material from appearing on the website.

11. Since its creation, and at all relevant times thereafter, the Wikitravel website has run on WIKIMEDIA’s free open-source software MediaWiki.

12. Since its creation, and at all relevant times thereafter, all contributions to Wikitravel have been licensed under the Creative Commons Attribution-ShareAlike License (“CC License”). Pursuant to the CC License, everyone who submits or edits content gives others the right to copy, distribute, sell, or modify that content in any manner they desire. The primary restrictions are that anyone who distributes the content, or derives new work from it, must (1) give proper attribution to the author; and (2) retain the work and any derivative works under the same open licensing terms. This means that so long as the author is credited, anyone can copy, publish, distribute, or modify content for any purpose, commercial or non-commercial. A true and correct copy of the CC License is attached hereto as Exhibit A and incorporated herein by reference as though set forth in full.

13. In light of the CC License, content submitted or edited by volunteer authors or administrators has never been owned by the owners of the Wikitravel website.

1 14. WIKIMEDIA is informed and believes and on that basis alleges that in or about
2 2005, IB purchased the Wikitravel internet domain name (www.wikitravel.org), the "Wikitravel"
3 name, and servers used to operate the website from Evan Prodromou and Michele Ann Jenkins.

4 15. IB did not acquire any property rights or interests with respect to volunteer authors
5 and administrators who create, curate, and edit the content which makes up the Wikitravel
6 website.

7 16. IB did not purchase the content on the Wikitravel website, since, pursuant to the
8 CC License, all such content is free to be copied, distributed, or sold by anyone who wishes to do
9 so subject only to the attribution and re-use obligations expressed therein.

10 17. WIKIMEDIA is informed and believes and on that basis alleges that after
11 assuming control of Wikitravel, IB operated the site in a manner that alienated and upset many of
12 the volunteer authors and administrators. To extract maximum commercial benefit from the site's
13 free content, IB began displaying intrusive commercial advertisements on the site, something that
14 had not been done prior to IB's purchase, and something which ran afoul of the aesthetics of
15 some of the most active volunteer authors and administrators of Wikitravel.

16 18. WIKIMEDIA is informed and believes and on that basis alleges that many of
17 Wikitravel's administrators, authors, and users were disenchanted with IB's private ownership,
18 preferring ownership by a non-commercial association. As a commercial actor motivated to
19 produce profits for its shareholders, IB operated the Wikitravel website in a manner that became
20 viewed as contrary to core values of the volunteer administrators who were concerned that the
21 display of advertisements would undermine the website's neutrality and impede its community
22 centric mission.

23 19. Eventually, on or about December 10, 2006, a group of volunteer administrators,
24 authors, and users split from Wikitravel and formed another wiki travel site called Wikivoyage.
25 Wikivoyage initially populated its new website with nearly all of the German-language content
26 from Wikitravel pursuant to the CC License, which permitted such use. Approximately one year

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1 later, an Italian branch of Wikivoyage was created, again copying content from the Wikitravel
2 website.

3 20. Wikivoyage is not currently affiliated with WIKIMEDIA or IB.

4 21. Despite the departure of a substantial number of volunteer administrators to
5 Wikivoyage, many administrators remained at Wikitravel and continued to donate their time
6 which resulted in the continued viability of the Wikitravel website.

7 22. Over the ensuing years (representing the time period of approximately 2006 to
8 2012), some of the remaining volunteer administrators of Wikitravel became increasingly
9 dissatisfied with IB's operation of Wikitravel. Their concerns primarily centered around two
10 issues: (1) lack of support and website maintenance by IB (including failure to address bug
11 reports, lack of new features, and failure to run and support the most recent versions of
12 MediaWiki); and (2) the perception that IB was excessively focused on "monetizing" the content
13 of the Wikitravel website – content which was the product of thousands of hours of
14 uncompensated volunteer effort.

15 23. Several of the volunteer administrators felt that the best course of action was to
16 create a new travel wiki, much like the administrators who left for Wikivoyage had done years
17 earlier.

18 24. On or about March 15, 2012, volunteer Wikitravel administrator James Heilman
19 contacted WIKIMEDIA about the possible creation of a new WIKIMEDIA owned wiki site
20 dedicated to travel.

21 25. In or about April 2012, the WIKIMEDIA community began a process called a
22 request for comment ("RFC") to gauge overall community interest and support in expanding the
23 WIKIMEDIA owned family of websites to include a new site dedicated to travel.

24 26. The RFC created by the users stated: "That we as the Wikimedia community ask
25 the Wikimedia Foundation to approve a Travel Guide project and allocate resources to support
26 any technical aspects of starting this new project. The project would combine efforts of free
27 knowledge travel sites, some of which (e.g., Wikivoyage) want to migrate completely with their
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1 content and communities to the new travel guide project and others (e.g. Wikitravel) whose
2 community of editors wish to join the Wikimedia movement.” A true and correct copy of this
3 RFC is attached hereto as Exhibit B and incorporated herein by reference as though set forth in
4 full.

5 27. The RFC asked members of the wiki community to comment on the proposal and
6 indicate whether or not they supported the proposal.

7 28. In or about June 2012, Wikivoyage’s general assembly unanimously and
8 independently supported a resolution to fold in its content and resources into the proposed
9 WIKIMEDIA site if and when created.

10 29. In or about June 2012, IB contacted WIKIMEDIA and proposed creating a new
11 travel-oriented wiki that could be jointly run as a “semi for profit” company with WIKIMEDIA.
12 WIKIMEDIA declined because operating such a commercial wiki project is contrary to its
13 mission of disseminating free information. WIKIMEDIA is informed and believes and on that
14 basis alleges that IB made this overture to stave off the “forking” of its Wikitravel website – if it
15 could induce WIKIMEDIA to join forces with it in the creation of a new travel site, IB could
16 forestall the feared loss of Wikitravel community volunteers to the new site that was then under
17 discussion. Given its mission and charter, WIKIMEDIA had no interest in forming a “semi for
18 profit” joint venture of any kind with IB and, rather, referred the matter to its community of users
19 under the RFC process so that the community could speak its mind and provide direction and
20 input to WIKIMEDIA.

21 30. On or about July 13, 2012, the Board of Directors of WIKIMEDIA requested that
22 the community consider extending the RFC for an additional six weeks to ensure that all
23 interested stakeholders had an opportunity to comment, including IB.

24 31. On or about August 23, 2012, the RFC ended with 540 votes cast in favor of
25 creating a travel wiki site and 152 votes cast against the proposal.

26 32. On or about August 28, 2012, in a transparent effort to derail the creation of a new
27 WIKIMEDIA sponsored travel website, IB filed a lawsuit in Los Angeles Superior Court naming
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1 as defendants James Heilman and another volunteer Wikitravel administrator, Ryan Holliday.
2 *Internet Brands, Inc. v. William Ryan Holliday et al.*, No. YC07706 (Los Angeles Sup. Ct., Filed
3 August 28, 2012).

4 33. IB's lawsuit seems an obvious attempt to intimidate both the personally named (as
5 defendants) volunteer administrators, and other voluntary authors and administrators, by
6 subjecting them to the prohibitive cost of defending a lawsuit. IB apparently hopes that this tactic
7 will intimidate other volunteers and thus prevent creation of a new, non-commercial travel site
8 supported by WIKIMEDIA.

9 34. While IB's Los Angeles lawsuit does not expressly name WIKIMEDIA as a
10 defendant, the complaint contains many implicit references to WIKIMEDIA and its involvement
11 in what the complaint refers to as a "civil conspiracy" surrounding the events and circumstances
12 pertaining to the proposed creation of a new travel wiki and the potentiality that freely usable
13 content and the volunteer administrators of the Wikitravel website owned by IB might ultimately
14 prefer the less-commercial travel site under consideration. For example, IB alleges (in paragraph
15 35 of its complaint) that "defendants Heilman and Holliday have not acted alone. Further
16 investigation continues to reveal additional co-conspirators and additional tortious and improper
17 conduct. Additional defendants and causes of action are expected through amendment,
18 potentially including... the Wikimedia Foundation, [and] members of its Board, or other
19 individual members of the Foundation...." Elsewhere in the complaint (*e.g.*, paragraph 31) IB
20 reveals its lawsuit's purpose as trying to forestall what it perceives as an effort by volunteer
21 authors and administrators to "migrat[e]" the "content and traffic" of Wikitravel to the proposed
22 new wiki travel site.

23 35. Notwithstanding IB's threats (including, without limitation, statements made
24 directly to WIKIMEDIA by IB prior the closing of the RFC period) and litigation against
25 individual Wikitravel volunteer authors and administrators, WIKIMEDIA plans to move forward
26 with the launch of a new wiki website offering free user generated travel content, some of which
27 may be copied from the Wikitravel website consistent with the express provisions of the CC
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1 License. WIKIMEDIA will offer any such content in compliance with the CC License without
2 charge and without limitation on its republication pursuant to the terms of such license and its
3 core mission and charter.

4 36. WIKIMEDIA is informed and believes and on that basis alleges that, by virtue of
5 the totality of conduct, acts and statements made directly to WIKIMEDIA and volunteer authors
6 and administrators of Wikitravel and Wikivoyage, IB contends that WIKIMEDIA's plan to create
7 and host a new wiki website devoted to travel, and its communications with Wikitravel's
8 volunteer authors and administrators concerning this plan, constitutes unlawful and/or wrongful
9 actions. WIKIMEDIA denies that its actions are unlawful and/or wrongful and instead alleges
10 that it has carefully directed the discussion about the creation of a new travel wiki in accordance
11 with the permissions, entitlements, and rights afforded under the licenses underlying the existing
12 sites of Wikitravel and Wikivoyage. WIKIMEDIA is committed to fostering the growth,
13 development, and distribution of free multilingual content, including travel content. Now,
14 therefore, it seeks a judicial declaration that it may continue its mission by pursuing the creation
15 of a new travel wiki without intimidation or interference from IB, whether directed against
16 WIKIMEDIA or against individual volunteers who do not possess the financial means to fully and
17 fairly defend themselves.

18 **FIRST CAUSE OF ACTION**

19 (Declaratory Judgment)

20 37. WIKIMEDIA incorporates by reference each of the allegations in paragraphs 1
21 through 36 of this Complaint as if fully set forth herein.

22 38. An actual and justiciable controversy has arisen and now exists between
23 WIKIMEDIA and IB concerning their respective rights and duties under the CC License.
24 WIKIMEDIA contends that under the terms of the CC License, IB may not restrict the use,
25 reproduction, sale, or modification of content on the Wikitravel website in any manner other than
26 requiring attribution to the creator of the content and that the content be maintained under the
27 same licensing terms.

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39. WIKIMEDIA seeks a judicial determination that IB has no lawful right, title or interest under the CC License to prevent use of such content created by volunteer users and administrators on the Wikitravel website. Specifically, WIKIMEDIA desires a judicial determination that IB has no right to limit or prevent the copying of user created content on the Wikitravel website and that all such content may be freely migrated without interference from IB under the express terms of the license under which such content was created and uploaded. WIKIMEDIA is informed and believes and on that basis alleges that IB disputes WIKIMEDIA's position, and contends it has the right to limit or prevent such use.

40. WIKIMEDIA also seeks a judicial determination that IB has no lawful right to prevent authors, administrators or other individuals who have posted or who are posting content on IB's Wikitravel site from freely contributing content to a new WIKIMEDIA owned travel website. WIKIMEDIA is informed and believes and on that basis alleges that IB disputes WIKIMEDIA's position, and contends it has the right to limit or prevent such conduct.

41. WIKIMEDIA further seeks a judicial determination that it may create, freely own and operate a website which contains any or all content created by volunteer authors and administrators which is or has been hosted on the Wikitravel website, as has been publicly announced under the RFC process described herein above. WIKIMEDIA is informed and believes and on that basis alleges that IB disputes WIKIMEDIA's position, and contends it has the right to limit or prevent WIKIMEDIA from owning or operating such a website.

42. WIKIMEDIA seeks a judicial determination that it may contact, communicate with, or express support for persons who are or were authors and administrators of the Wikitravel website and who are seeking to participate in a new WIKIMEDIA owned website, potentially copy Wikitravel content and migrate it to a WIKIMEDIA owned site, even if such contact, communication, or support results in the volunteer authors and administrators no longer providing volunteer services to Wikitravel. WIKIMEDIA is informed and believes and on that basis alleges that IB disputes WIKIMEDIA's position, and contends that WIKIMEDIA has no right to contact, communicate with, encourage or express support for such persons.

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43. WIKIMEDIA further seeks a judicial determination that it may assist persons, including current or former volunteer authors and editors of Wikitravel, in copying and migrating content from the Wikitravel website to a WIKIMEDIA owned site or third party site in accordance with the CC License. WIKIMEDIA is informed and believes and on that basis alleges that IB disputes WIKIMEDIA's position, and contends that WIKIMEDIA may not assist in the copying or migration of content from the Wikitravel website to any other website.

44. A judicial declaration is necessary and appropriate at this time under the circumstances.

PRAYER FOR RELIEF

45. WHEREFORE, Plaintiff WIKIMEDIA FOUNDATION, INC. prays for the following relief:

46. For declaratory judgment finding that IB has no right to limit the use of user created content on the Wikitravel website and that all such content may be freely migrated without interference from IB under the express terms of the license under which such content was created and uploaded;

47. For declaratory judgment finding that IB has no lawful right to prevent authors, administrators or other individuals who have posted or who are posting content on IB's Wikitravel site from freely contributing content to a new WIKIMEDIA owned travel website;

48. For declaratory judgment finding that WIKIMEDIA may own and operate a website which contains any or all content created by volunteer authors and administrators which is or has been hosted on the Wikitravel website, as has been publicly announced under the RFC process described herein above;

49. For declaratory judgment finding that WIKIMEDIA may contact, communicate with, or express support for persons who are or were volunteer authors and administrators of the Wikitravel website and who are seeking to participate in a new WIKIMEDIA owned website, potentially copy Wikitravel content and migrate it to a WIKIMEDIA owned site, even if such contact, communication, or support results in the volunteer authors and administrators no longer

1 providing volunteer services to Wikitravel;

2 50. For declaratory judgment finding that WIKIMEDIA may assist persons, including
3 current or former volunteer authors and editors of Wikitravel, in copying and migrating content
4 from the Wikitravel website to a WIKIMEDIA site or third party site;

5 51. For reasonable attorneys' fees and costs to the full extent permitted by law on
6 equity and such other and further relief as the Court deems just and proper.

7 Dated: September 4, 2012

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12 DYLAN R. HALE (240898)
13 RAY A. SARDO (245421)

14 By: Michael G. Rhodes
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16 Attorneys for Plaintiff
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