

1 GILL SPERLEIN (172887)
2 121Capp Street, Suite 200
3 San Francisco, California 94110
4 Telephone: (415) 487-1211 X32
5 Facsimile: (415) 252-7747
6 legal@titanmedia.com

7 Attorney for Plaintiff
8 IO GROUP, INC.

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11	)	) CASE NO.: _____
12	)	) COMPLAINT:
13))
14	)	) 1. COPYRIGHT INFRINGEMENT;
15	)	) 2. CONTRIBUTORY COPYRIGHT
16	)	) INFRINGEMENT;
17	)	) 3. VICARIOUS COPYRIGHT
18	)	) INFRINGEMENT;
19	)	) 4. UNAUTHORIZED USE OF A
20	)	) PHOTOGRAPH [Cal. Civ. Code §3344];
	)	) AND
	)	) 5. AN ACCOUNTING
))
	)	) JURY TRIAL DEMANDED

21 **INTRODUCTION**

22
23 1. This is an action by Io Group, Inc. a California corporation, d/b/a Titan Media
24 (“Titan Media”), to recover damages arising from infringement of Titan Media’s copyrights in its
25 creative works by Defendant Timothy J. Ward and to enjoin Defendant from future infringement.
26 Defendant reproduced, distributed and publicly displayed, through Internet websites which he
27 owns, operates and controls, certain Titan Media-owned images.
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1 **INTRADISTRICT ASSIGNMENT**

2 7. Pursuant to United States District Court, Northern District of California Civil Local
3 Rule 3-12 this case should be assigned to Judge Claudia Wilken in the Oakland Division as a
4 related case as outlined in the accompanying Notice of Related Case.
5

6 **VENUE**

7 8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(2), 1392 and
8 1400(a).

9 **FACTS COMMON TO ALL CLAIMS**

10 9. Plaintiff Titan Media produces and distributes adult-oriented audiovisual works in
11 video and DVD formats. Additionally, Plaintiff maintains a website by and through which high-
12 resolution versions of its photographic works and other content can be viewed by individuals who
13 pay a monthly subscription fee.
14

15 10. Plaintiff additionally sells the audiovisual works it produces in DVD and VHS
16 format through various wholesale companies for further distribution.
17

18 11. Plaintiff has won numerous awards for its high quality work, beginning with an
19 award for Best Gay Video in its first year in existence (1995) through 2002 when Plaintiff
20 received awards for Best Gay DVD and Best Gay Video. Plaintiff has received awards for Best
21 Cinematography, Best Videography, Best Art Direction, and Best Editing. Plaintiff is recognized
22 throughout the industry as one of the highest quality producers of gay erotica.
23

24 12. Plaintiff has a general compensation rate of \$2,500 per image as specified in its
25 standard Notice of Terms agreement which is posted on its website.

26 13. Each of the photographic images at issue in this action is of obviously high
27 production value and is easily discernable as a professional work.
28

1 23. Plaintiff produced and owns the relevant photographic works, which Defendant
2 illegally reproduced, distributed and publicly displayed by and through the websites sobe-cfg.com
3 and sobear.com.

4
5 24. Plaintiff holds with the United States Copyright Office duly and properly registered
6 copyright certificates for each of these photographic works, the associated audiovisual works and
7 all related promotional materials.

8 Defendant Willfully Infringed Plaintiff's Registered Copyrights

9
10 25. Defendant infringed the copyrights in Plaintiff's creative works by reproducing,
11 distributing and publicly displaying infringing materials by and through the sobe-cfg.com and
12 sobear.com websites without Plaintiff's approval or authorization.

13 26. Defendant illegally reproduced, distributed and publicly displayed at least two
14 hundred twenty-nine (229) Plaintiff -owned images, thereby engaging in at least two hundred
15 twenty-nine (229) separate infringing acts.

16
17 27. Defendant's conduct was willful within the meaning of the Copyright Act. At a
18 minimum, Defendant acted with willful blindness to and in reckless disregard of Plaintiff's
19 registered copyrights.

20 28. Defendant knew or should have known his acts constituted copyright infringement.

21 29. Defendant knew he did not have permission to publish Plaintiff's images on the
22 sobe-cfg.com and sobear.com websites.

23
24 30. On information and belief, Defendant made no attempt to discover the proper
25 owner of the images before reproducing, distributing and publicly displaying the images.

26 31. After plaintiff demanded that Defendant cease reproducing, distributing and
27 publicly displaying its works, Defendant reproduced, distributed and publicly displayed an
28

1 additional fifty-six (56) Plaintiff-owned images on the sobe-cfg.com website and approximately
2 fifty (50) Plaintiff-owned images on the sobear.com website.

3 32. As a result of his wrongful conduct, Defendant is liable to Plaintiff for copyright
4 infringement pursuant to 17 U.S.C. § 501. Plaintiff has suffered, and will continue to suffer,
5 substantial losses, including but not limited to damage to its business reputation and goodwill.
6

7 33. Plaintiff is entitled to recover damages, which include its losses, including, but not
8 limited to, its lost licensing fee of \$2,500 per image, and any and all illicit profit Defendant made
9 as a result of his wrongful conduct. 17 U.S.C. § 504. Alternatively, Plaintiff is entitled to
10 statutory damages under 17 U.S.C. § 504(c).
11

12 34. In addition, because Defendant's infringement has been willful, the award of
13 statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).
14

15 35. Plaintiff is also entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an
16 order impounding any and all infringing materials pursuant to 17 U.S.C. § 503. Plaintiff has no
17 adequate remedy at law for Defendant's wrongful conduct because, among other things, (a)
18 Plaintiff's copyrights are unique and valuable property which have no readily determinable market
19 value, (b) Defendant's infringement harms Plaintiff's business reputation and goodwill such that
20 Plaintiff could not be made whole by any monetary award, and (c) Defendant's wrongful conduct,
21 and resulting damage to Plaintiff is continuing.
22

23 36. In addition, Plaintiff is entitled to recover its attorneys' fees and costs of suit
24 pursuant to 17 U.S.C. § 505.
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1 **SECOND CAUSE OF ACTION**

2 **(Contributory Copyright Infringement)**

3 37. Plaintiff repeats and incorporates by this reference each and every allegation set
4 forth in paragraphs 1 through 36, inclusive.
5

6 38. Defendant induced, caused and materially contributed to the infringing acts of its
7 members, namely the further reproducing, distributing and publicly displaying of plaintiff's
8 copyrighted works.

9 39. Defendant had knowledge of its members' infringing acts.
10

11 **THIRD CAUSE OF ACTION**

12 **(Vicarious Copyright Infringement)**

13 40. Plaintiff repeats and incorporates by this reference each and every allegation set
14 forth in paragraphs 1 through 39, inclusive.

15 41. Defendant had the right and ability to control the infringing acts of its members.

16 42. Defendant obtained a direct financial benefit from the infringing activities of its
17 members.
18

19 **FOURTH CAUSE OF ACTION**

20 **(Unauthorized Commercial Use of a Photograph – Cal. Civ. Code § 3344)**

21 43. Plaintiff repeats and incorporates by this reference each and every allegation set
22 forth in paragraphs 1 through 42, inclusive.
23

24 44. Plaintiff's copyrighted works embody images of actors all of whom executed
25 written agreements with Plaintiff through which Plaintiff became the exclusive proprietor of the
26 actors' rights of publicity in the performances embodied in Plaintiff's creative works including the
27 right to use the photographs for commercial gain.
28

1 45. All rights of publicity in respect to those images have at all times been exclusively
2 administered from within San Francisco, California.

3 46. Defendant infringed publicity rights properly assigned to Plaintiff, including the
4 right to use the photographs for commercial gain, by displaying photographs of the actors for
5 commercial gain without Plaintiff's consent.
6

7 47. As a direct and proximate result of Defendant's conduct as aforesaid, Plaintiff has
8 been damaged by lost income in an amount to be determined at trial.

9 48. Defendant acted deliberately to injure Plaintiff and otherwise in conscious
10 disregard of Plaintiff's rights. Further, Defendant performed these acts, or otherwise authorized,
11 ratified or had knowledge of them and thereby acted in conscious disregard of Plaintiff's rights.
12 Defendant's conduct as alleged above has damaged and will continue to damage Plaintiff's
13 goodwill and reputation and has resulted in losses to Plaintiff and illicit gain of profit to Defendant
14 in an amount unknown at the present time.
15

16 49. In the alternative, Plaintiff is entitled to statutory damages of \$750 per unauthorized
17 use as provided by Cal. Civ. Code § 3344.
18

19 50. Defendant's conduct justifies an award of exemplary or punitive damages in an
20 amount sufficient to punish the Defendant and to make an example of him to others as provided
21 for in Cal. Civ. Code § 3344(a).
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23 51. Plaintiff is entitled to recover its attorneys' fees and costs of suit pursuant to Cal.
24 Civ. Code § 3344(a).
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1 **FIFTH CAUSE OF ACTION**

2 **(Accounting)**

3 52. Plaintiff repeats and incorporates by this reference each and every allegation set
4 forth in paragraphs 1 through 51, inclusive.

5 53. Plaintiff is entitled, pursuant to 17 U.S.C. § 504 and Cal. Civ. Code § 3344, to
6 statutory damages or Plaintiff's actual damages and all Defendant's profits attributable to the
7 illegal acts herein described.

8 54. The amount of compensatory damages due from Defendant to Plaintiff is unknown
9 to Plaintiff and cannot be ascertained without a detailed accounting by Defendant of the precise
10 number of sales of Plaintiff's images.

11 55. Accordingly, Plaintiff is entitled to and hereby demands a full accounting from
12 Defendant.

13 **JURY DEMAND**

14 56. Plaintiff hereby demands a jury trial in this case.

15 **PRAYER**

16 WHEREFORE, Plaintiff Titan Media respectfully requests judgment as follows:

- 17 (1) That the Court enter a judgment against Defendant that he has:
- 18 a. willfully infringed Plaintiff's rights in federally registered copyrights under 17
19 U.S.C. § 501,
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21 b. willfully violated Plaintiff's rights of publicity in violation of California Civ.
22 Code § 3344; and
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1 c. otherwise injured the business reputation and business of Plaintiff by
2 Defendant's acts and conduct set forth in this Complaint.

3 (2) That the Court issue injunctive relief against Defendant, and that Defendant, his
4 agents, representatives, servants, employees, attorneys, successors and assigns, and all others in
5 active concert or participation with him, be enjoined and restrained from copying, posting or
6 making any other infringing use or infringing distribution of audiovisual works, photographs or
7 other materials protected by Plaintiff Titan Media's registered copyrights;
8

9 (3) That the Court enter an order requiring a full and complete accounting of all
10 amounts due and owing to Plaintiff as a result of Defendant's illegal activities;
11

12 (4) That the Court order Defendant to pay Plaintiff's general, special, actual and
13 statutory damages as follows:

- 14 a. Plaintiff's damages and Defendant's profits pursuant to 17 U.S.C. § 504(b), or
15 in the alternative, enhanced statutory damages pursuant to 17 U.S.C. §
16 504(c)(2), for Defendant's willful infringement of Plaintiff's copyrights;
17
18 b. Plaintiff's damages and Defendant's profits pursuant to Cal. Civ. Code §
19 3344(a) and California Common Law or in the alternative statutory damages
20 pursuant to Cal. Civ. Code § 3344(a).
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22 (5) That the Court order Defendant to pay punitive damages pursuant to Cal. Civ. Code
23 § 3344(a).

24 (6) That the Court order Defendant to pay Plaintiff both the costs of this action and the
25 reasonable attorneys' fees incurred by it in prosecuting this action pursuant to 17 U.S.C. § 505
26 and Cal. Civ. Code § 3344(a).
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(7) That the Court grant to Plaintiff such other and additional relief as is just and proper.

Dated: *November 25, 2003*

Respectfully submitted,

/s/ D. Gill Sperlein

GILL SPERLEIN,
Attorney for Plaintiff