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

THE NEW YORK TIMES COMPANY, :

Plaintiff, :

v. :

AOL, INC., :

and :

THEHUFFINGTONPOST.COM, INC. :

Defendants. :

Civil Action No. _____

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**COMPLAINT FOR TRADEMARK INFRINGEMENT, UNFAIR COMPETITION, AND
DECEPTIVE TRADE PRACTICES**

The New York Times Company, for its Complaint, avers:

INTRODUCTION

1. This is a straightforward case of trademark infringement, unfair competition, and deceptive trade practices.

2. Since at least as early as October 1, 2008, Plaintiff The New York Company (“NYTCo”) has used the trademark *Motherlode* in commerce in connection with a successful blog about parenting and family issues at its *NYTimes.com* website.

3. Since its inception, the primary author of NYTCO's *Motherlode* blog was Lisa Belkin. Ms. Belkin was an employee of NYTCO from 1982-1993 and was a freelance writer for NYTCO from 1993 through September 2011.

4. NYTCO brought the original idea behind what would become the *Motherlode* blog to Ms. Belkin in the summer of 2008 and NYTCO first conceived of the *Motherlode* trademark in approximately August 2008.

5. In September 2011, Ms. Belkin announced she would no longer be working with NYTCO and would instead write a competing blog for *The Huffington Post*. Ms. Belkin's last writings for NYTCO's *Motherlode* blog occurred on October 7, 2011.

6. Ms. Belkin's new blog at *The Huffington Post* was launched on October 24, 2011. However, rather than select an original name for Ms. Belkin's competing blog at *The Huffington Post*, Defendants AOL, Inc. ("AOL") and *TheHuffingtonPost.com, Inc.* ("*The Huffington Post*") decided to adopt and use the trademark *Parentlode*, a trademark clearly derived from NYTCO's established *Motherlode* trademark and one intended to create an association with Ms. Belkin's prior work at NYTCO. Moreover, as is obvious from the *Parentlode* trademark itself, the trademark has no particular meaning and could not have been selected for any reason but to create an association with NYTCO's established *Motherlode* trademark.

7. As further discussed in this Complaint, Ms. Belkin's own writings and the tags and keywords initially placed at *The Huffington Post* website underscored AOL's and *The Huffington Post*'s desire to create this association and confusion between the blogs and trademarks.

8. AOL's and *The Huffington Post*'s actions resulted in immediate confusion in the

marketplace, with readers of Ms. Belkin's blog believing her blog was a continuation of NYTCo's *Motherlode* blog when in fact NYTCo continues to publish its *Motherlode* blog.

THE PARTIES

9. NYTCo is one of the leading media companies in the world. NYTCo has used its *The New York Times* trademark since at least as early as 1851 and today offers numerous products and services under its famous *The New York Times* trademark and under numerous other trademarks.

10. NYTCo publishes an online version of *The New York Times* at the URL *NYTimes.com*, various blogs, and electronic media products. According to comScore Media Metrix, in September 2011, *NYTimes.com* had 34 million unique visitors in the United States.

11. Defendant, AOL, Inc. ("AOL") is a global Internet services and media company.

12. Defendant TheHuffingtonPost.com, Inc. ("*The Huffington Post*") operates a news website and content aggregating blog founded by Arianna Huffington, Kenneth Lerer, and Jonah Peretti, featuring various news sources. The site offers coverage of politics, media, business, entertainment, living, style, the green movement, world news, and comedy, and has news, blogs, and some original content. *The Huffington Post* was launched on May 9, 2005

13. In February 2011, AOL purchased *The Huffington Post* for \$315 million. Shortly after the acquisition was announced, *The Huffington Post* co-founder Arianna Huffington assumed the role of President and Editor-in-Chief of "The AOL Huffington Post Media group."

NYTCo'S MOTHERLODE BLOG AND TRADEMARK

14. One of NYTCo's more popular blogs since its original launch on October 1, 2008 has been its *Motherlode* blog. NYTCo's *Motherlode* blog concerns parenting, children and

family. NYTCo's *Motherlode* blog is typically updated daily and has achieved a large and loyal following over the last three years.

15. NYTCo has used the *Motherlode* trademark in interstate commerce since at least as early as October 1, 2008, *i.e.*, the day the *Motherlode* blog was launched at NYTCo's *NYTimes.com* website.

16. Until October 7, 2011, NYTCo's *Motherlode* blog was authored primarily by Lisa Belkin. NYTCo's *Motherlode* blog was very successful and became a frequent destination on the *NYTimes.com* website for readers, who are able to leave their own comments on the website regarding *Motherlode* blog postings.

17. In September 2011, Ms. Belkin decided to cease writing for NYTCo and begin writing a blog on similar topics for *The Huffington Post*.

18. Since ending her relationship with NYTCo and authoring the *Motherlode* blog, NYTCo has continued to publish the *Motherlode* blog, with new contributors and authors. The blog continues to be one of the more popular blogs at the *NYTimes.com* website.

19. On October 24, 2011, NYTCo filed a use-based trademark application for its *Motherlode* trademark in the U.S. Patent and Trademark Office, alleging use of the mark in commerce since at least as early as October 1, 2008 and identifying the following services: on-line journals, namely, blogs featuring information, news and commentary in the field of family and parenting; providing a website featuring blogs and non-downloadable publications in the nature of magazines, newsletters and newspapers in the fields of family and parenting.

AOL'S AND THE HUFFINGTON POST'S MOTHERLODE BLOG AND TRADEMARK

20. On October 14, 2011, shortly after Ms. Belkin ceased writing for NYTCo, AOL filed an application to register the trademark *Parentlode* in the U.S. Patent and Trademark Office

based upon AOL's intent to use the trademark in interstate commerce. The application identifies the following services: online journals, namely, blogs in the field of parenting and family.

21. On October 24, 2011, NYTCo was first alerted to the fact that *The Huffington Post* had launched a blog authored by Ms. Belkin under the trademark *Parentlode*. After reviewing the first blog entry, NYTCo discovered that the blog covered the same topics as those covered in NYTCo's *Motherlode* blog.

**CONFUSION BETWEEN THE MOTHERLODE AND PARENTLODE BLOGS
AND TRADEMARKS**

22. In her first blog entry on October 24, 2011, Ms. Belkin explicitly attempted to draw attention to the connection between *The Huffington Post*'s new *Parentlode* blog and NYTCo's existing *Motherlode* blog, in writing the following:

Finally, why the new name? For three years I have fielded reader emails about how "Motherlode" doesn't really fit in an era when fathers are every bit the parent. It also doesn't fit a blog that so regularly champions equality, and new paradigms, nor one that is written by a writer who is exquisitely aware of the power of words. For three years I have answered those emails by saying that a brand is a brand, and the Times wasn't inclined to change this one, but if I were choosing today I would choose something more inclusive

23. In drawing attention to the purported relationship between the blogs and offering the *Parentlode* blog as a continuation of NYTCo's *Motherlode* blog, Ms. Belkin clearly intended to create an association in the minds of readers between the two competing blogs and, further, her reference to the "new name" was a deliberate attempt to mislead readers into mistakenly believing it was the same blog, albeit with a slightly different name and location.

24. Ms. Belkin's efforts to confuse readers had the desired result, causing immediate confusion among readers of NYTCo's *Motherlode* blog. This confusion was illustrated in comments in social media outlets such as Twitter. For example, on the same day that AOL and *The Huffington Post* launched the *Parentlode* blog, comments on Twitter included false

statements such as “The NYT’s Motherlode becomes HuffPo’s Parentlode.”

25. In addition to making a false association between NYTCo’s *Motherlode* blog and *The Huffington Post*’s *Parentlode* blog in her initial blog entry, AOL and *The Huffington Post* also used NYTCo’s *Motherlode* trademark in larger than normal text, formatted as a title, above the blog entry and as a tag and keyword to index the *Parentlode* blog on *The Huffington Post* website.

NYTCo’S REQUEST TO THE HUFFINGTON POST TO CEASE USE OF THE PARENTLODE TRADEMARK

26. Immediately upon learning of *The Huffington Post*’s and AOL’s use of the *Parentlode* trademark in connection with Ms. Belkin’s blog, NYTCo’s in-house counsel sent Ms. Arianna Huffington at *The Huffington Post* a letter dated October 24, 2011, advising *The Huffington Post* of NYTCo’s longstanding trademark rights in the *Motherlode* trademark, setting forth NYTCo’s objection to *The Huffington Post*’s use of the similar trademark *Parentlode*, and asking that the name be changed to something more original.

27. AOL’s in-house counsel responded in a letter dated October 27, 2011 to NYTCo’s in-house counsel, stating that AOL and *The Huffington Post* “respect the intellectual property rights of others,” but declining to cease AOL’s and *The Huffington Post*’s use of the *Parentlode* trademark based upon their belief that AOL’s and *The Huffington Post*’s use of the *Parentlode* trademark is not likely to cause confusion with NYTCo’s *Motherlode* trademark. AOL and *The Huffington Post* agreed, however, to remove NYTCo’s *Motherlode* trademark from *The Huffington Post* website and to discontinue using NYTCo’s *Motherlode* trademark as a tag and keyword in connection with *The Huffington Post* website and *Parentlode* blog. AOL’s counsel did not explain, however, why AOL and/or *The Huffington Post* selected a trademark that was such a close variant of the trademark used with NYTCo’s *Motherlode* blog,

which had been authored by Ms. Belkin for the three previous years, and a trademark in which NYTCo had indisputable prior rights.

JURISDICTION AND VENUE

28. This court has jurisdiction over Count I of this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338 as the present case arises under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, as amended, and as is hereinafter more fully described.

29. All other claims asserted in this action arise out of the same transaction or occurrence, so that this court has supplemental jurisdiction over all additional claims asserted in this action under 28 U.S.C. § 1367(a).

30. NYTCo is a New York corporation with a principal place of business at 620 Eighth Avenue, New York, New York 10018.

31. AOL, Inc. is a Delaware corporation with a principal place of business at 22000 AOL Way, Dulles, Virginia 20166.

32. The HuffingtonPost.com, Inc. is a Delaware corporation with a principal place of business at 560 Broadway, Suite 401, New York, New York 10012.

33. On information and belief, AOL and *The Huffington Post* have committed acts of trademark infringement, unfair competition, and deceptive trade practices, as described below, in this District and elsewhere.

34. On information and belief, AOL and *The Huffington Post* are subject to the jurisdiction of this Court, and venue is proper in this District pursuant to 28 U.S.C. § 1391.

COUNT I **TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(A)**

35. NYTCo repeats and re-alleges the allegations contained in the preceding

paragraphs of this Complaint as though the same were fully rewritten herein.

36. Section 1125(a) of Title 15 of the United States Code states, in pertinent part, the following:

Any person who, on or in connection with any good or services, ... uses in commerce any word, term, name, symbol, ... or any false designation of origin, ... which -- is likely to cause confusion, or to cause mistake, or to deceive...as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person...shall be liable in a civil action.

37. NYTCo's *Motherlode* trademark is inherently distinctive and NYTCo has made continuous use of the *Motherlode* trademark in interstate commerce since at least as early as October 1, 2008 in connection with an interactive blog concerning parenting and family.

38. AOL's and *The Huffington Post*'s use of the trademark *Parentlode* falsely suggests that NYTCo is the source of, or has authorized, AOL's and *The Huffington Post*'s blog and is likely to deceive readers of the blog, and members of the relevant trade and public, into believing that AOL's and *The Huffington Post*'s blog is that of NYTCo, or is authorized or approved by NYTCo, or is provided in affiliation with NYTCo, in violation of 15 U.S.C. § 1125(a).

39. AOL's and *The Huffington Post*'s conduct constitutes trademark infringement, unfair competition, and false designation of origin in violation of 15 U.S.C. §1125(a).

40. AOL's and *The Huffington Post*'s conduct is being conducted with willful disregard of NYTCo's valuable trademark rights in the *Motherlode* trademark. AOL's and *The Huffington Post*'s use of the *Parentlode* mark in connection with their blog is a willful attempt to trade upon the goodwill that NYTCo has developed in the *Motherlode* trademark through its many years of use of the *Motherlode* mark.

41. NYTCo has no adequate remedy at law. The said conduct of AOL and *The*

Huffington Post's has caused and, if not enjoined, will continue to cause irreparable damage to the rights of NYTCo in its *Motherlode* trademark mark and blog, reputation and goodwill. NYTCo's damages from the aforesaid unlawful actions of AOL and *The Huffington Post* are not yet determined.

COUNT II
USE OF A NAME WITH INTENT DECEIVE UNDER NEW YORK
BUSINESS LAW § 133

42. NYTCo repeats and re-alleges the allegations contained in the preceding paragraphs of this Complaint as though the same were fully rewritten herein.

43. Due to NYTCo's prominent use the *Motherlode* mark in New York state and elsewhere, NYTCo's *Motherlode* mark has become well-known throughout New York state.

44. AOL's and *The Huffington Post*'s continued use of the *Parentlode* mark in connection with their competing *Parentlode* blog is likely to deceive or mislead the public as to the source of the *Parentlode* blog or as to the connection of AOL, *The Huffington Post*, and their blog with NYTCo.

45. NYTCo has no adequate remedy at law. The said conduct of AOL and *The Huffington Post* has caused and, if not enjoined, will continue to cause, irreparable damage to NYTCo's rights in the *Motherlode* trademark and to the business, reputation and goodwill associated therewith.

PRAYER FOR RELIEF

WHEREFORE, NYTCo respectfully demands judgment:

a. That AOL, *The Huffington Post*, their officers, directors, agents, servants, employees, attorneys, confederates, related companies, licensees, and all persons acting for, with, by, through and under them, be preliminarily and permanently enjoined:

(1) from using the *Parentlode* trademark and any other confusingly similar mark or domain name, reproduction or colorable imitation of the NYTCo's *Motherlode* trademark in connection with a blog, website or related product/service offering commentary, news or advice in the field of parenting and family;

(2) from using the *Parentlode* trademark and any other confusingly similar mark or domain name, reproduction or colorable imitation of the NYTCo's *Motherlode* trademark in any manner likely to cause confusion, mistake or to deceive the relevant trade and public;

(3) from using *Motherlode* and *Parentlode* as advertising keywords or as metatags to promote any blog or related product of AOL or *The Huffington Post*;

(4) from committing any acts calculated to cause consumers or the relevant trade to believe that AOL's or and *The Huffington Post*'s products and services are associated with or authorized by NYTCo; and

(5) from otherwise competing unfairly with NYTCo in any manner.

b. That AOL be ordered to abandon its pending trademark application for the *Parentlode* trademark in the U.S. Patent and Trademark Office.

c. That AOL and *The Huffington Post* pay to NYTCo such damages as NYTCo has

sustained as a consequence of AOL's and *The Huffington Post's* infringement, unfair competition, and deceptive trade practices, and to account for and to pay to NYTCO:

(1) all gains, profits and advantages derived by AOL and *The Huffington Post* from their infringement;

(2) all gains, profits and advantages derived by AOL and *The Huffington Post* from their unfair competition;

(3) all gains, profits and advantages derived by AOL and *The Huffington Post* from their deceptive trade practices; and


(4) all damages incurred by NYTCO as a result of AOL's and *The Huffington Post's* infringement, unfair competition, and deceptive trade practices.

d. That NYTCO be awarded its reasonable attorney's fees and costs in this action.

e. That NYTCO be awarded such other and further relief as the court may deem equitable.

Respectfully submitted,

By: _____



THE NEW YORK TIMES COMPANY

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