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Clerk, U.S. District Court
Northern District of California
San Jose

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ADR

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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

14 YAHOO! INC.,

Case No. **C09 03528**

MEJ

15 Plaintiff,

**COMPLAINT FOR
CYBERSQUATTING, TRADEMARK
INFRINGEMENT, FALSE
DESIGNATION OF ORIGIN,
DILUTION, AND UNFAIR
COMPETITION**

16 v.

17 ASHANTIPLC LIMITED, ALIZA SARID,
18 and KISHOE BHAVNANIE,

DEMAND FOR JURY TRIAL

19 Defendants.

20
21 Plaintiff Yahoo! Inc. ("Plai ntiff" or "Yahoo!") brings this action against Defendants
22 Ashantiplc Limited ("Ashanti"), Aliza Sarid, and Kishoe Bhavnanie (collectively, "Defendants").
23 Plaintiff alleges as follows, upon actual knowledge with respect to itself and its own acts, and upon
24 information and belief as to all other matters:

25 **NATURE OF THE ACTION**

26 1. This is an action for cybersquatting under 15 U.S.C. § 1125(d), trademark
27 infringement under 15 U.S.C. § 1114(1), trademark infringement and false designation of origin
28 under 15 U.S.C. § 1125(a), trademark dilution under 15 U.S.C. § 1125(c), trademark dilution under

1 California Business & Professions Code § 14247, unfair competition under California Business &
2 Professions Code § 17200 *et seq.*, and common law trademark infringement and unfair competition.

3 2. Yahoo! brings this action seeking equitable and monetary relief from Defendants'
4 willful violation of Yahoo!'s rights in its famous FLICKR trademark with the bad-faith intent to
5 profit from that mark. Defendants' registration and use of the confusingly similar FLICKER.COM
6 domain name for a website displaying photography-related ads constitutes cybersquatting, infringes
7 Yahoo!'s established rights in its FLICKR mark, dilutes the distinctiveness of that famous mark, and
8 constitutes unfair competition under federal, state, and/or common law.

9 **PARTIES**

10 3. Plaintiff Yahoo! is a Delaware corporation headquartered in this District.

11 4. Defendant Ashanti is a Hong Kong corporation having its place of business at
12 Shanghai Industrial Investment Building, Room 1204 12/F, Hong Kong.

13 5. Defendant Aliza Sarid is an individual residing in Florida, and a managing agent of
14 Defendant Ashanti. Mr. Sarid does business under the name Sahar Sarid.

15 6. Defendant Kishoe Bhavnanie is an individual residing in Florida, and a managing
16 agent of Defendant Ashanti. Mr. Bhavnanie does business under the name Jeff Bhavnanie.

17 **JURISDICTION AND VENUE**

18 7. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C.
19 § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b). Because Plaintiff is a Delaware corporation with a
20 principal place of business in California, Ashanti is a Hong Kong corporation with a place of
21 business in Hong Kong, Sarid and Bhavnanie are individuals residing in Florida, and the matter in
22 controversy exceeds \$75,000, exclusive of interest and costs, this Court also has diversity
23 jurisdiction under 28 U.S.C. § 1332. This Court has supplemental jurisdiction over Plaintiff's state
24 law claims pursuant to 28 U.S.C. § 1367 because those claims are so related to its federal claims that
25 they form part of the same case or controversy and derive from a common nucleus of operative facts.

26 8. This Court has personal jurisdiction over the Defendants and venue is proper in the
27 Northern District of California pursuant to 28 U.S.C. § 1391(b) and (c). Defendants transact
28 business in this District, and operate a number of Internet-related businesses with customers in this

1 District. In addition, Plaintiff's claims arise in this District, and a substantial portion of the activity
2 about which Plaintiff complains has taken place in this District. The FLICKER.COM domain name
3 at issue in this case connects to a website that is accessible to users in this District, and Defendants
4 have solicited advertisers from this District for that website. Also, because Plaintiff resides in this
5 District, the damages and injury suffered by Plaintiff were and are suffered, in substantial part, in
6 this District.

7 **INTRADISTRICT ASSIGNMENT**

8 9. The San Jose Division of the Northern District of California is the appropriate division
9 because a substantial part of the events giving rise to Plaintiff's claims occurred in Santa Clara
10 county, where Plaintiff's principal place of business is located.

11 **YAHOO! AND ITS PRODUCTS AND SERVICES**

12 10. Yahoo! is a leading global Internet brand and communications, commerce, and media
13 company that offers a comprehensive branded network of searching, directory, information,
14 communication, shopping, electronic commerce, and other online services to millions of Internet
15 users daily. Yahoo! is focused on powering its communities of users, advertisers, publishers, and
16 developers by creating indispensable experiences built on trust. Yahoo!'s main YAHOO! website in
17 the U.S. is located at the domain name YAHOO.COM and URL <http://www.yahoo.com>, and is one
18 of the most trafficked Internet destinations worldwide.

19 11. Many of Yahoo!'s online products and services are offered to the public free of
20 charge, and others are offered for subscription and/or service fees. Yahoo! also receives revenues
21 from an array of transactions originating from its websites, and derives income from the sale of
22 advertising and co-branding or sponsorship agreements with other companies. Yahoo!'s range of
23 marketing services make it easier and more effective for advertisers and marketers to reach and
24 connect with Internet users. Yahoo! serves advertisements for thousands of companies each year,
25 and its advertising clients have included a majority of the "Fortune 100" largest advertisers.

26 12. Yahoo! operates many websites in addition to its YAHOO.COM website. Yahoo!'s
27 FLICKR website located at the domain name FLICKR.COM is one of the world's leading online
28 digital-content management and sharing services. Since its inception in 2004, the FLICKR website

1 and community has revolutionized the sharing and discovery of what people see and experience
2 through digital images, the vast majority of which are photographs but also including videos and
3 artwork. The FLICKR website allows users to upload, store, explore, find, manage, edit, and share
4 digital images with friends, family, and the world. Representative printouts from the FLICKR
5 website are attached as Exhibit 1.

6 13. The FLICKR website offers basic accounts for free, and accounts with larger storage
7 for a subscription fee. Free FLICKR accounts include a monthly photo upload limit of 100
8 Megabytes (MB) and 2 video uploads per month (90 seconds max, 150MB per video). Subscription
9 FLICKR accounts include unlimited photo and video uploads, the ability to show high-definition
10 videos, unlimited storage, and archiving of high-resolution original images.

11 14. FLICKR members can upload photos and videos from computers, via e-mail, or via
12 camera phone. Those images can then be searched by users (members and non-members) by
13 photographer, tag, time, text, group, or geographic location. Members can control who views and/or
14 shares their digital content by applying certain settings, including privacy levels, which determine
15 who can view the images; usage licenses, for the protection copyrighted works; content type, to flag
16 documents as photos, videos, artwork, illustrations, or screen shots; and safety levels, so members
17 can see only images within their specified comfort zones.

18 15. The FLICKR website also offers a host of photo and video management services.
19 Members can create sets (groupings of photos and videos organized around the user's theme such as
20 trips or pets) and collections (groupings of sets organized under a larger theme, such as travels or
21 years). Members can also "tag" their photos and videos with up to 75 tags, which are similar to
22 keywords or category labels that allow the image to be further organized and easily found by other
23 users and members.

24 16. FLICKR members can create public or private groups and join other members' groups
25 to share photos and videos, and exchange comments and information via a discussion board. For
26 example, FLICKR groups allow members who attended the same event (such as a trip, wedding, or
27 reunion) to share their photos and videos of the event in one location. Sharing is at the heart of the

28 / / /

1 FLICKR website, which has more than 30,000,000 registered members, and stores and displays
2 hundreds of millions of photographs and videos.

3 17. The FLICKR website also offers a variety of communication and social networking
4 services. FLICKR members can create contacts and e-mail subscriptions to share and receive
5 updates from family and friends. Contacts can leave messages directly on members' photos and
6 videos during "mouseovers," and comments below the image. Members can also create guest passes
7 to share photographs and videos with people who do not have FLICKR accounts. The FLICKR
8 website even offers a number of data feeds, including customizable feeds, which allow contacts to
9 receive updates about the FLICKR accounts of their friends and family.

10 18. In addition to the above services, Yahoo! has partnered with a number of companies to
11 offer FLICKR members the ability to create a wide array of products from photographs and videos,
12 and to grant permission to other members to create such products. These products include but are
13 not limited to prints, including prints available for pick-up at Target stores, slideshow DVDs,
14 postage stamps, photo books, framed prints, posters, calendars, cards and stationary, holiday cards,
15 and personalized credit cards.

16 19. The FLICKR website offers extensive information on the cameras used for the photos
17 and videos posted in the FLICKR website, and offers a "camera finder" feature. Among other
18 things, this feature displays graphs of the number of FLICKR members who have uploaded images
19 with a particular type of camera on a given day, lists the types of cameras used by FLICKR members
20 to capture the images uploaded on the FLICKR website, provides FLICKR member reviews of their
21 cameras, and shows examples of photographs taken with different types of cameras and uploaded to
22 the FLICKR website.

23 20. The FLICKR website also displays advertisements from Yahoo!'s advertising
24 network, including sponsored-link advertisements and banner advertisements. A significant
25 percentage of the revenues derived from the FLICKR website relate to these advertisements. Many
26 of these advertisements relate to photography and digital content-related products and services. For
27 example, advertisements for Adorama Camera, Ritz Camera, and B&H Photo have been served to
28 and have appeared on the FLICKR website.

1 21. The FLICKR website has been enormously popular for many years. For example, the
2 FLICKR website had more than 923,000 unique visitors and 14,000,000 page views in May 2005;
3 more than 8,440,000 unique visitors and 443,000,000 page views in May 2007; more than
4 53,950,000 unique visitors and 1,140,000,000 page views in May 2008; and more than 84,130,000
5 unique visitors and 1,860,000,000 page views in May 2009.

6 22. Alexa, which is a popular third-party traffic-ranking website, currently ranks the
7 FLICKR website as number 18 of the top 100 sites on the Internet in the U.S. Printouts from
8 Alexa's website providing these rankings are attached as Exhibit 2.

9 23. Yahoo! has extensively promoted its FLICKR services and FLICKR.COM website in
10 the U.S. The FLICKR website has also received notoriety and media recognition since its inception.
11 Numerous media outlets have published stories about the FLICKR website over the years including,
12 for example, *The New York Times*, *Forbes*, *The Washington Post*, *The Boston Globe*, *Chicago Sun-*
13 *Times*, and *The Los Angeles Times*, among many others. Thousands of news article or wires have
14 mentioned the FLICKR website since March 2004. There have also been numerous stories where
15 the FLICKR website was mentioned in the headlines or title of the article or wire, including in
16 prominent nationwide publications such as *USA Today*, *Business Week*, *PC World*, and *Mac World*.

17 24. In or around March 2005, in addition to the usual publicity surrounding the FLICKR
18 website and business, numerous media outlets reported the acquisition of the FLICKR business by
19 Yahoo!. For example, news regarding the acquisition appeared in reports on television, in
20 publications, and/or online by media outlets in the U.S. These media outlets included *South Florida*
21 *Sun Sentinel*, *St. Petersburg Times*, *The Herald-Tribune*, *The Miami Herald* (publications circulated
22 in Florida where Defendants Sarid and Bhavnanie reside and work), as well as other prominent
23 media outlets such as *Newsweek*, and news reporting services such as the *Business Wire* and *AP*
24 *Online*. These media outlets collectively reached tens of millions (if not hundreds of millions) of
25 people in the U.S.

26 25. The FLICKR website has also received many awards and accolades. For example, in
27 2005, the FLICKR website received the Webby "Breakout of the Year" Special Achievement
28 Award, the Bloggies "Best Meme" award, and was included in the *Time Magazine* list of "50 coolest

1 websites.” In subsequent years, the FLICKR website won additional awards, including many
 2 Webby Awards such as “Best Navigation/Structure” (2006); “Best Practices” (2006, 2007, 2008);
 3 “Best Visual Design” and “People’s Voice” (2007, 2008); and “Community” (2008).

4 26. By virtue of the distinctive nature and thus inherent strength of the FLICKR mark as
 5 applied to Yahoo!’s services and products; the many millions of visitors to the FLICKR website
 6 every day; the many millions of links to the FLICKR site from third-party websites; and Yahoo!’s
 7 extensive use and registration of its FLICKR mark, the FLICKR mark has been famous for years.

8 **YAHOO!’S FLICKR TRADEMARK AND FLICKR.COM DOMAIN NAME**

9 27. Yahoo!, through itself and its predecessor-in-interest, has used the distinctive FLICKR
 10 mark and name in commerce in the U.S. in connection with its products and services, including but
 11 not limited to computer software, and photography, communication, and electronic storage and
 12 management services since at least as early as February 2004.

13 28. Yahoo! owns strong common-law trademark rights in the FLICKR trademark. The
 14 FLICKR mark is suggestive and thus inherently distinctive because it suggests, rather than merely
 15 describes, a characteristic of the FLICKR products and services. Further, as a result of Yahoo! and
 16 its predecessor’s longstanding use of the FLICKR mark, widespread advertising, publicity, and
 17 promotion of that mark, and the FLICKR businesses’ commercial success, the FLICKR mark has
 18 been commercially strong and famous for many years.

19 29. In addition to its common-law rights, Yahoo! owns the following federal trademark
 20 registration for the FLICKR mark in the U.S.:

| 21 MARK | 22 REG. NO. / REG. DATE | FILING DATE | FIRST USE DATES | PRODUCTS/SERVICES |
|----------------|------------------------------------|------------------------|--------------------------------|---|
| 23 FLICKR | 24 3455275 25 6/24/2008 | 26 5/10/2005 | 27 2/28/2004 | 28 Computer software for use in database management; computer software for uploading, manipulating, and enhancing digital content, documents, photographs, images, video, and audio; computer software for linking metadata tags with photographic and other media files to enable search engine retrieval and database software collections of files and their on-line sharing, and for linking metadata tags with web pages visited, to create links which users can maintain for themselves and share with on-line groups and website tagging in Class 9 |

| MARK | REG. NO./ REG. DATE | FILING DATE | FIRST USE DATES | PRODUCTS/SERVICES |
|------|------------------------|----------------|-----------------------|--|
| | | | 2/28/2004 | Communication services by electronic computer terminals and cell phones; telecommunication services by e-mail electronic mail services; electronic transmission of messages, images, and via computer terminals and cell phones; providing online forums for discussion and electronic bulletin/message boards for transmission of messages among users in the field of general interest; providing on-line electronic bulletin boards for transmission of messages among computer users concerning personal photographs in Class 38 |
| | | | 2/28/2004 | Electronic storage of digital content including text, photographs, images, video, and audio, in Class 39 |
| | | | 12/5/2007 | Digital enhancement of photographs; alteration and/or retouching of photographic images, in Class 40 |
| | | | 2/28/2004 | Online journals, namely, blogs concerning topics of general interest to the blogger; photography services; providing information in the field of photography, in Class 41 |

A copy of this registration is attached as Exhibit 3.

30. The existence of this valid and subsisting federal trademark registration is prima facie evidence of Yahoo!'s ownership and the validity of the FLICKR trademark.

31. Yahoo! also owns the domain name FLICKR.COM, which was registered in November 2003 and which has been used for the FLICKR website since at least as early as February 2004.

DEFENDANTS' UNLAWFUL ACTIVITIES

32. For many years, Defendants have been in the business of registering, buying, and selling domain names for profit. Defendant Sarid is a self-proclaimed domain name expert, and maintains a blog devoted to domain-name related issues at the domain name CONCEPTUALIST.COM. Printouts from Sarid's blog are attached as Exhibit 4. Defendant Bhavnanie also has significant experience and knowledge about domain names.

33. Defendants Sarid and Bhavnanie have co-founded a number of Internet-related businesses over the years. Sarid and Bhavnanie founded Defendant Ashanti at least as early as 2003. In connection with that business, Sarid and Bhavnanie purchased a number of domain names with

1 the intent to use and sell them for profit. Ashanti was initially listed on WHOIS records as the
2 registrant (owner) for many of these domain names. The domain names were registered through the
3 domain-name registrar GoDaddy.com.

4 34. In July 2006, Defendants purchased the FLICKER.COM domain name in an eBay
5 auction from E.K. Kern of Royersford, Pennsylvania. Defendants paid approximately \$55,000 for
6 the FLICKER.COM domain name, and registered it shortly thereafter under the registrant name
7 Ashanti through GoDaddy.com. Based on the extensive publicity surrounding the FLICKR business
8 and its enormous commercial success prior to the sale, Defendants knew when they registered the
9 FLICKER.COM domain name that it was a confusingly similar variation of Yahoo!'s famous
10 FLICKR trademark and name.

11 35. In addition, Defendants had knowledge in July 2006 of Yahoo!'s FLICKR mark and
12 name from the content of the website accessible at FLICKER.COM (which content had been created
13 by the domain name's former owner E.K. Kern). The website displayed a notice referring to
14 Yahoo!'s FLICKR website by indicating, "This is not the FLICKR photo sharing site, which is
15 spelled differently." This notice was displayed immediately before Defendants purchased the
16 FLICKER.COM domain name. Printouts showing this notice are attached as Exhibit 5.

17 36. Further, because Defendants were domain-name experts and had years of experience
18 in the domain-name industry, their willingness to pay \$55,000 for the FLICKER.COM domain name
19 shows that Defendants registered the FLICKER.COM domain name opportunistically, with the bad-
20 faith intent to capitalize on Yahoo!'s goodwill in its FLICKR trademark and name, including but not
21 limited to by selling the FLICKER.COM domain name to Yahoo! or a third party for profit and/or by
22 generating revenues from advertisers in connection with the FLICKER.COM domain name.

23 37. In or around 2006, Defendants moved their domain names, including the
24 FLICKER.COM domain name, from GoDaddy.com to the registrar Moniker. Defendants also
25 purchased Moniker's private registration service, which shielded the identity and contact information
26 for the registrant from the public on WHOIS records. Specifically, Ashanti's name and contact
27 information was replaced with Moniker's name and contact information so that the public would not
28 be able to tell who owned the domain names.

1 38. At least as early as 2007, Defendants began using the FLICKER.COM domain name
2 for a website offering the domain name for sale. The FLICKER.COM website listed offers ranging
3 from \$10,000 to \$90,000 that Defendants had received and rejected. In August 2007, in an effort to
4 promote the sale of the FLICKER.COM domain name, Defendants displayed traffic statistics on the
5 website, which ranged from 146,108 unique visitors in October 2006 to 210,000 unique visitors in
6 January 2007.

7 39. In or around 2008, Defendants again moved their domain names, including the
8 FLICKER.COM domain name, this time from Moniker to Backslap Domains. Defendants
9 purchased Backslap's private registration service to shield the identity and contact information of the
10 owner from the public on WHOIS records.

11 40. In June 2009, Yahoo! learned that Defendants were displaying photography-related
12 advertisements on the FLICKER.COM website for Adorama Camera, Ritz Camera, and B&H Photo.
13 These advertisements included descriptions of the photography-related products and services offered
14 by these companies (which were identical, similar, and/or closely related to Yahoo!'s FLICKR
15 products and services), links to the advertiser's websites, and six additional links for each company,
16 which described a particular page of their websites (e.g., Professional Cameras & Lenses under
17 Adorama Camera, Store Locator under Ritz Camera, Pro Camera & Lenses under B&H Photo). A
18 printout of this website, a screen shot of this website, and a printout of the source code for this
19 website are attached as Exhibit 6

20 41. Defendants' FLICKER.COM website used shortened links to these advertisers'
21 websites provided by Bit.ly. The Bit.ly website posts information for its URLs that can be publicly
22 accessed, including the number of times a link was clicked, the time frame for the clicks, and the
23 geographic location of the Internet users who clicked on the Bit.ly link. Printouts from the Bit.ly
24 website for the Bit.ly URLs used on Defendants' website, with the exception of one Bit.ly URL that
25 was non-functional, are attached as Exhibit 7

26 42. As shown in Exhibit 7, the traffic to the Bit.ly links for Adorama Camera, Ritz
27 Camera, and B&H Photo on the FLICKER.COM website began in June 2009, and the number of
28 Internet users who clicked on the links was substantial, totaling at least 15,130. A chart summarizing

1 the number of clicks each of the advertisers received through the FLICKER.COM website and
 2 trends in traffic during representative time frames is shown below.

| ADVERTISER | TIME PERIOD | CLICKS | U.S. CLICKS | TRENDS |
|-------------|---------------------------------|--------|-------------|---|
| B&H Photo | June 4 - 30, 2009 (26 days) | 11,724 | 3,049 | Substantial increase through June 2009 |
| Adorama | June 13 - 30, 2009 (17 days) | 3,241 | 743 | Substantial increase through June 2009 |
| Ritz Camera | June 23 - 30, 2009 (7 days) | 165 | 70 | Majority of clicks July 29 and 30, 2009 |

11 43. Defendants' website at the domain name FLICKER.COM has also displayed traffic
 12 statistics. For example, in June 2009, the website stated it received 3.6 million unique visits per
 13 year, with 95.74% visits originating via direct navigation, i.e., when Internet users type the domain
 14 name into the address line of an Internet browser rather than locating the website via search engines
 15 or links on third-party websites. It further stated that the website generated 400,000 outbound clicks
 16 per year. Because there was no content on the FLICKER.COM website to which a user would seek
 17 to navigate directly, these numbers show that a high percentage of the visitors to the
 18 FLICKER.COM domain name were looking for Yahoo!'s FLICKR website and typed in a
 19 phonetically identical misspelling of Yahoo!'s FLICKR.COM domain name.

20 44. In addition, Defendants' website at the domain name FLICKER.COM has provided
 21 financial information regarding advertising on the website. In June 2009, for example, the website
 22 stated that "CPC Keyword Values" (i.e., cost-per-click keyword values) for photography equipment
 23 ranged from \$2.50 to \$3.00 per click, and that "Daily Value to Advertisers" ranged from \$2,700 -
 24 \$3,300. In other words, according to these statistics, each time a user clicked on a link on the
 25 FLICKER.COM website, advertisers would pay Defendants \$2.50 - 3.00. Based on these numbers,
 26 Defendants were receiving \$1,000,000 to \$1,200,000 per year in advertising revenues from the
 27 FLICKER.COM domain name and website.

28 / / /

1 45. As shown in the source code of the FLICKER.COM website, the “meta name” for the
2 website is “Flicker is down for maintenance and we will be back shortly.” By using this text as a
3 “meta name,” it appears in the description for the website in search results when the term
4 FLICKER.COM is searched via search engines, as shown by the printouts attached as Exhibit 8. As
5 a result, thousands of Internet users searching for Yahoo!’s FLICKR website have been left with the
6 mistaken impression that the FLICKR website is down for maintenance when, in fact, it is not.

7 46. For example, a FLICKR member posted a message regarding Defendants’ “down for
8 maintenance” message on the FLICKR website that shows actual confusion. Specifically, the
9 FLICKR member stated on the FLICKR help forum “I checked coming in to flicker.com through
10 MSN and get a twitter message flicker is doing maintenance, ON A SUNDAY????”. The FLICKR
11 member mistakenly believed that Yahoo! was doing maintenance on its FLICKR.COM website on a
12 Sunday when it was actually Defendants who announced they were doing maintenance. A printout
13 from the FLICKR help forum is attached as Exhibit 9.

14 47. In June 2009, Defendants created an account at the popular social-messaging website
15 Twitter using the name FLICKERDOTCOM and the ID WWW.FLICKER.COM, and began posting
16 messages on June 15, 2009 about the FLICKER.COM website. Defendants’ Twitter postings
17 identified the FLICKER.COM website as a full-service photography-related website, promoted the
18 photography-services advertisers on the website, and solicited additional photography-related
19 advertisers for the website as well as other advertisers. Defendants’ Twitter postings also
20 encouraged Twitter users to “spread the news” that the FLICKER.COM website was “down for
21 maintenance.”

22 48. Defendants’ Twitter postings immediately referenced photography in relation to the
23 FLICKER.COM website. For example, Defendants identified the FLICKER.COM website as “Your
24 site for all your photography needs” in a Twitter post on June 16, 2009. Additional representative
25 samples of these posts are shown below, and website printouts of the posts are attached as
26 Exhibit 10.

27 / / /

28 / / /

| DATE | DEFENDANTS' POSTS |
|---------------|--|
| June 15, 2009 | <p>“What camera (Nikon, Canon, Olympus, etc) are you shooting with these days?”</p> <p>“Flicker recommends: B&H Photo Video, Adorama Camera, eBay. See site for details.”</p> |
| June 16, 2009 | <p>“New photography links on site for photographers”</p> <p>“Flicker likes Canon, Nikon, B&H, Adorama,” “We looooooooooooooooooove female photographers! :)”</p> <p>“Name your Labrador puppy “KodaK”. It's the cheapest Kodak lab you'll ever get!”</p> |
| June 18, 2009 | <p>“In the process of building a Twitter app, find photography equipment easier than ever”</p> <p>“Do you love photography as much as we do?”</p> |
| June 19, 2009 | <p>“Flicker likes B&H, ADORAMA, eBay Camera”</p> |
| June 20, 2009 | <p>“As we're still working on our site, please visit our friends @ B&H, ADORAMA, eBay”</p> |
| June 26, 2009 | <p>“Flicker loves B&H . . .”</p> <p>“Flicker loves @AdoramaCamera . . .”</p> <p>“Digital lenses, Canon EOS, Nikon, Digital Cameras, Professional Video, Adorama Camera, B&H Photo Video, even eBay”</p> |
| June 28, 2009 | <p>“FLICKER LOVES ADORAMA CAMERA, B&H PHOTO STORE. Best Canon EOS, Nikon, digital, video equipment deals online” (June 28), “Flicker loves B&H, ADORAMA, and even eBay !”</p> <p>“Flicker loves B&H, ADORAMA, and even eBay !”</p> <p>“FLICKER LOVES ADORAMA CAMERA, B&H PHOTO STORE. Best Canon EOS, Nikon, digital, video equipment deals online” (June 28), and “FLICKER LOVES RITZ CAMERA TOO”</p> |

49. Defendants also solicited on Twitter photography-related advertisers for the FLICKER.COM website with the following representative posts:

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| DATE | DEFENDANTS' POSTS |
|---------------|---|
| June 26, 2009 | <p data-bbox="570 289 1377 359">"Own a photography store? have \$\$\$ to spend? advertise on Flickr today www.Flicker.com to contact us"</p> <p data-bbox="570 390 1330 459">"Own a photography store? have \$\$\$ to spend >>?? advertise on Flickr today www.Flicker.com to contact us"</p> |
| June 26, 2009 | <p data-bbox="570 499 1365 569">"By popular request bitly stats B&H (top link) http://bit.ly/as958, to advertise on Flickr, contact us via site www.Flicker.com"</p> |

50. On June 25, 2009, Defendants posted information on Twitter regarding the Internet traffic to the FLICKER.COM website and promoted the pay-per-click revenue (i.e., the payments from advertisers each time a user clicks on an advertisement or pop-up ads appear on the website) received on the website with the Twitter post "Flicker by the numbers www.Flicker.com #directnavigation #domain #ppc #domains #sem #seo #flicker #camera #photography #digitalphotography." Defendants also posted "Flicker by the numbers, <http://bit.ly/1awZ5F>, <http://bit.ly/KMviO>."

51. The first link connected to a Photobucket.com page providing Internet traffic statistics for the FLICKER.COM website indicating that it had 66,972 visits from June 20, 2009 to June 25, 2009, with an average of 11,162 visits *per day*. The second link connected to a Photobucket.com page providing Internet traffic statistics for the FLICKER.COM website indicating it had 89,101 visits with 95.62% of those visits originating from direct navigation. Printouts of the Photobucket.com web pages available via Defendant's links <http://bit.ly/1awZ5F> and <http://bit.ly/KMviO> listed above are attached as Exhibit 11.

52. As noted above, Defendants used the meta name "Flicker is down for maintenance and we will be back shortly" for the FLICKER.COM website, and the meta name appeared in the description section for the FLICKER.COM website in search results. This "down for maintenance" notice resulted in users inquiring about the status on the Twitter website. Below is a chart summarizing some of these exchanges.

///

///

| DATE | USER INQUIRY | DEFENDANTS' RESPONSE |
|----------------|--|--|
| June 25, 2009 | "Jerry Ross: When will flicker be back up?" | "Flicker: It's in the hands of god!" |
| June 28, 2009, | "Via email: Name: Jerry Ross Email: ross@rio.com Message: When will you be back up?" | FLICKER: Shortly Jerry, shortly." |
| June 27, 2009 | from ApplesSquared | "RT @ApplesSquared: Flickr is currently performing maintenance on our hosting environment. Please check back soon." "Flicker is currently performing maintenance on our hosting environment. Please check back soon." |
| June 28, 2009 | none or unknown | "Flicker is currently performing maintenance on our hosting environment. Please check back soon." |

These comments by Twitter users are examples of actual confusion between Yahoo!'s FLICKR website and the Defendants' FLICKER.COM website.

53. Defendants Ashanti, Sarid, and Bhavnanie each actively participated in the illegal acts described above, or otherwise caused those illegal acts to occur.

54. Plaintiff has not authorized Defendants to register or use in any way the FLICKER.COM domain name.

YAHOO!'S OBJECTIONS TO DEFENDANTS' UNLAWFUL ACTIVITIES

55. On June 27, 2009, in-house counsel for Yahoo! contacted Defendants by e-mail regarding the FLICKER.COM website.

56. On June 29, 2009, counsel for Defendants responded to Yahoo! by e-mail, indicating that he represented Ashanti in the matter.

57. Through counsel, Yahoo! and Defendants engaged in settlement discussions and attempted to amicably resolve the dispute, but were unable to reach an agreement.

1 58. Yahoo! did not grant Defendants and/or Defendants a release from any claims,
2 including for damages and other monetary relief, relating to the registration, use, or trafficking in the
3 FLICKER.COM domain name or any other domain names at any time.

4 **HARM TO PLAINTIFF AND THE GENERAL PUBLIC**

5 59. Defendants' unauthorized registration and use of the FLICKER.COM domain name is
6 likely to cause confusion, mistake, and deception as to the source or origin of the FLICKER.COM
7 domain name, and is likely to falsely suggest a sponsorship, connection, license, or association of
8 Defendants, and the FLICKER.COM domain name, with Plaintiff. In fact, Defendants' actions have
9 already caused actual confusion with Plaintiff and its services.

10 60. Defendants' activities have irreparably harmed, and if not enjoined, will continue to
11 irreparably harm the general public, which has an inherent interest in being free from confusion,
12 mistake, and deception.

13 61. Defendants' activities have irreparably harmed and, if not enjoined, will continue to
14 irreparably harm Plaintiff and Plaintiff's FLICKR mark.

15 62. Defendants actions described above are likely to dilute and, if not enjoined, will
16 continue to dilute the distinctiveness and value of Plaintiff's famous FLICKR mark.

17 63. Defendants' activities have all times relevant to this action been willful and/or
18 knowing.

19 **FIRST CAUSE OF ACTION**

20 **Cybersquatting Under 15 U.S.C. § 1125(d)**

21 64. Plaintiff realleges and incorporates by reference Paragraphs 1 through 63 as though
22 fully set forth here.

23 65. Defendants registered, trafficked in, and/or used the FLICKER.COM domain name
24 with a bad-faith intent to profit from Plaintiff's FLICKR mark.

25 66. Plaintiff's FLICKR mark was distinctive at the time Defendants registered, trafficked
26 in, and used the FLICKER.COM domain name.

27 67. Plaintiff's FLICKR mark was federally registered at the USPTO at the time
28 Defendants used the FLICKER.COM domain name.

1 68. Plaintiff's FLICKR mark was famous at the time Defendants registered, trafficked in,
2 and used the FLICKER.COM domain name.

3 69. The FLICKER.COM domain name is identical or confusingly similar to Plaintiff's
4 FLICKR mark.

5 70. Defendants do not have any intellectual property rights or any other rights in the
6 FLICKER.COM domain name.

7 71. The FLICKER.COM domain name does not consist of the legal name of any of the
8 Defendants, or a name that is otherwise commonly used to identify any of the Defendants.

9 72. Defendants have not made any prior use of the FLICKER.COM domain name in
10 connection with the *bona fide* offering of any goods or services.

11 73. Defendants have not made any *bona fide* fair use of the FLICKR mark on its website
12 accessible at the FLICKER.COM domain name.

13 74. Defendants registered and used the FLICKER.COM domain names to divert
14 customers to the website accessible at the FLICKER.COM domain name from Plaintiff's FLICKR
15 website for Defendants' commercial gain by creating a likelihood of confusion as to the source,
16 sponsorship, affiliation, or endorsement of the website.

17 75. Defendants offered to sell the FLICKER.COM domain name for financial gain.

18 76. Defendants are or were the registrant or the registrant's authorized licensee or user of
19 the Infringing Domain Name.

20 77. Defendants' activities described above have at all times been willful and/or knowing.

21 78. As a direct and proximate result of actions of Defendants described above, Plaintiff
22 has been damaged and will continue to be damaged.

23 **SECOND CAUSE OF ACTION**

24 **Trademark Infringement Under 15 U.S.C. § 1114(1)**

25 79. Plaintiff realleges and incorporates by reference each of the allegations contained in
26 Paragraphs 1 through 78 of this Complaint as though fully set forth here.

27 80. Without Plaintiff's consent, Defendants used in commerce reproductions, copies, and
28 colorable imitations of Plaintiff's registered FLICKR mark in connection with the offering,

1 distribution, and advertising of goods and services, which is likely to cause confusion, or to cause
2 mistake, or to deceive, in violation of Section 32(a) of the Lanham Act, 15 U.S.C. § 1114(1).

3 81. Defendants' activities described above have at all times been willful and/or knowing.

4 82. As a direct and proximate result of actions of Defendants described above, Plaintiff
5 has been damaged and will continue to be damaged.

6 **THIRD CAUSE OF ACTION**

7 **Trademark Infringement And False Designation Of Origin Under 15 U.S.C. § 1125(A)**

8 83. Plaintiff realleges and incorporates by reference each of the allegations contained in
9 Paragraphs 1 through 82 of this Complaint as though fully set forth here.

10 84. Defendants' actions, as described above, are likely to cause confusion, or to cause
11 mistake, or to deceive as to the origin, sponsorship, or approval of Defendants, their products and
12 services, and/or their commercial activities by or with Plaintiff, and thus constitute trademark
13 infringement false designation or origin, passing off, and unfair competition in violation of Section
14 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

15 85. Defendants' activities described above have at all times been willful and/or knowing.

16 86. As a direct and proximate result of actions of Defendants described above, Plaintiff
17 has been damaged and will continue to be damaged.

18 **FOURTH CAUSE OF ACTION**

19 **Dilution Under 15 U.S.C. § 1125(C)**

20 87. Plaintiff realleges and incorporates by reference each of the allegations contained in
21 Paragraphs 1 through 86 of this Complaint as though fully set forth here.

22 88. The FLICKR mark is famous, as that term is used in 15 U.S.C. § 1125(c), and was
23 famous before Defendants' registration and use of the FLICKER.COM domain name in commerce,
24 based on, among other things, the inherent distinctiveness and federal registration of the FLICKR
25 mark and the extensive nationwide use, promotion, and recognition of the FLICKR mark.

26 89. Defendants' actions, as described above, are likely to dilute the distinctive quality of
27 Plaintiff's famous and well-known FLICKR trademark in violation of Section 43(c) of the Lanham
28 Act, 15 U.S.C. § 1125(c), as amended by the Trademark Dilution Revision Act of 2006.

1 90. Defendants' activities described above have at all times been willful and/or knowing.

2 91. As a direct and proximate result of actions of Defendants described above, Plaintiff
3 has been damaged and will continue to be damaged.

4 **FIFTH CAUSE OF ACTION**

5 **Dilution Under California Business & Professions Code § 14247**

6 92. Plaintiff realleges and incorporates by reference each of the allegations contained in
7 Paragraphs 1 through 91 of this Complaint as though fully set forth herein.

8 93. The FLICKR mark is famous, and was famous before Defendants' use of the
9 FLICKER.COM domain name in commerce, based on, among other things, the inherent
10 distinctiveness and federal registration of the FLICKR mark and the extensive nationwide use,
11 promotion, and recognition of the FLICKR mark.

12 94. Defendants' use of the FLICKER.COM domain name is likely to cause dilution by
13 blurring and dilution by tarnishment of the FLICKR mark.

14 95. The above-described acts of Defendants constitute trademark dilution in violation of
15 California Business & Professions Code § 14247.

16 96. Defendants' activities described above have at all times been willful and/or knowing.

17 97. As a direct and proximate result of actions of Defendants described above, Plaintiff
18 has been damaged and will continue to be damaged.

19 **SIXTH CAUSE OF ACTION**

20 **Unfair Competition With Plaintiff Under California Business & Professions Code § 17200**

21 98. Plaintiff realleges and incorporates by reference each of the allegations contained in
22 Paragraphs 1 through 97 of this Complaint as though fully set forth herein.

23 99. Defendants have infringed Plaintiff's FLICKR mark in violation of Plaintiff's
24 proprietary rights. Such acts constitute unfair trade practices and unfair competition under
25 California Business & Professions Code §§ 17200 *et seq.*

26 100. Defendants' activities described above have at all times been willful and/or knowing.

27 101. As a direct and proximate result of actions of Defendants described above, Plaintiff
28 has been damaged and will continue to be damaged.

1 SEVENTH CAUSE OF ACTION

2 Common Law Trademark Infringement, Unfair Competition, Misappropriation

3 102. Plaintiff realleges and incorporates by reference each of the allegations contained in
4 Paragraphs 1 through 101 of this Complaint as though fully set forth here.

5 103. Defendants have infringed Plaintiff's FLICKR mark in violation of Plaintiff's
6 proprietary rights. Such acts constitute unfair trade practices and unfair competition under the
7 common law.

8 104. Defendants' activities described above have at all times been willful and/or knowing.

9 105. As a direct and proximate result of actions of Defendants described above, Plaintiff
10 has been damaged and will continue to be damaged.

11 **REQUEST FOR RELIEF**

12 Therefore, Plaintiff respectfully requests judgment as follows:

13 1. That the Court enter a judgment that Defendants have:

- 14 (a) violated the rights of Plaintiff in Plaintiff's FLICKR mark in violation of
15 15 U.S.C. § 1125(d);
- 16 (b) infringed the rights of Plaintiff in Plaintiff's FLICKR mark in violation of
17 15 U.S.C. § 1114(1);
- 18 (c) violated the rights of Plaintiff in Plaintiff's FLICKR mark in violation of
19 15 U.S.C. § 1125(a);
- 20 (d) violated the rights of Plaintiff in the FLICKR mark in violation of 15 U.S.C.
21 § 1125(c);
- 22 (e) violated the rights of Plaintiff in the FLICKR mark in violation of California
23 Business & Professions Code § 14247;
- 24 (f) infringed the rights of Plaintiff in Plaintiff's FLICKR mark in violation of
25 California Business and Professions Code § 17200;
- 26 (g) infringed the rights of Plaintiff in Plaintiff's FLICKR mark in violation of
27 common law.
- 28

1 2. That Defendants be ordered to transfer to Plaintiff the FLICKER.COM domain name
2 and all other domain names they own or control that are identical or confusingly similar to Plaintiff's
3 FLICKR mark;

4 3. That Defendants, their agents, representatives, employees, assigns and suppliers, and
5 all persons acting in concert or privity with Defendants be preliminarily and permanently enjoined
6 from the following activities:

7 (a) Registering, using, or trafficking in any manner, any domain name that
8 incorporates, in whole or in part, Plaintiff's FLICKR mark, or any name, mark
9 or designation confusingly similar thereto or dilutive thereof;

10 (b) Using Plaintiff's FLICKR mark, or any other name, mark, designation or
11 depiction in a manner that is likely to cause confusion regarding whether
12 Defendants are affiliated or associated with or sponsored by Plaintiff or that is
13 likely to dilute the FLICKR mark;

14 (c) Engaging in cybersquatting, trademark infringement, trademark dilution,
15 unfair competition, false designation of origin, or passing off, against Plaintiff
16 or misappropriation of Plaintiff's trademark rights; and

17 (d) Assisting, aiding or abetting any other person or business entity in engaging in
18 or performing any of the activities referred to in subparagraphs 3(a) through
19 3(c) above;

20 4. That Defendants be ordered to pay statutory damages under 15 U.S.C. § 1117(d), on
21 election by Plaintiff, in an amount of One Hundred Thousand Dollars (\$100,000) for the registration,
22 trafficking in, and use of the FLICKER.COM domain name;

23 5. That Defendants be ordered to account to Plaintiff for, and disgorge, all profits they
24 have derived by reason of the unlawful acts complained of above, and an increasing of such profits
25 under 15 U.S.C. § 1117 and all other applicable laws;

26 6. That Defendants be ordered to pay Plaintiff's actual damages, and that those damages
27 be trebled, under 15 U.S.C. § 1117 and all other applicable laws;

28

1 7. That Defendants be ordered to pay Plaintiff's litigation expenses, including
2 reasonable attorney fees, prejudgment interest, and costs of this action under 15 U.S.C. § 1117 and
3 under California Business and Professions Code § 17200, and under the California common law;

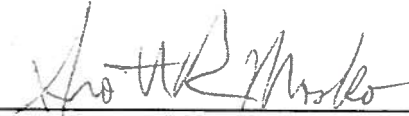
4 8. That Defendants pay Plaintiff punitive damages under California common law;

5 9. That Defendants be ordered to file with the Court and serve upon Plaintiff a written
6 report under oath setting forth in detail the manner and form in which Defendants have complied
7 with the injunction and judgment within thirty (30) days after the service of the injunction and
8 judgment upon Defendants; and

9 10. That Plaintiff be awarded such other relief as may be appropriate.

10
11 Dated: July 31, 2009

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

12
13 By: 
14 _____

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YAHOO! INC.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury to decide all issues so triable in this case.

Dated: July 31, 2009

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

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