

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FULLTIME FANTASY SPORTS, LLC, a Delaware :
limited liability company, :
 :
Plaintiff, : Case No. ____ -cv- ____ (____)
 :
v. :
 :
CBS INTERACTIVE INC., a Delaware corporation, : **COMPLAINT FOR**
 : **TRADEMARK**
 : **INFRINGEMENT, FALSE**
 : **ADVERTISING, BREACH OF**
 : **CONTRACT, CONVERSION,**
 : **UNLAWFUL AND DECEPTIVE**
 : **PRACTICES, AND UNFAIR**
 : **COMPETITION**
 :
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Plaintiff Fulltime Fantasy Sports, LLC (“Fulltime”), for its complaint against Defendant CBS Interactive Inc. (“CBSi”), alleges and complains as follows:

NATURE OF THE CLAIM

1. This is a civil action seeking damages, profits and injunctive relief for trademark infringement and false advertising under the federal Lanham Act, 15 U.S.C. § 1125, and breach of contract, conversion, unlawful and deceptive practices, and unfair competition under New York state law including New York General Business Law §349.

2. In February 2017, Fulltime and CBSi entered into a Publisher Agreement under which CBSi agreed to pay Fulltime a percentage of advertising and subscription revenue in return for a license to use Fulltime’s premier fantasy sports content, services, tools, and intellectual property, including the widely-regarded “Scout Fantasy” trademark that Fulltime had used since 2014. CBSi failed to pay amounts due under the Publisher Agreement and, without authorization, merged Fulltime’s Facebook page into its own, permanently eliminating a key connection between Fulltime and Fulltime’s 60,000 Facebook followers. After Fulltime terminated the Publisher Agreement due to CBSi’s material breach, CBSi continued to use the

Scout Fantasy name and logo without Fulltime's permission, with the purpose of intentionally confusing consumers and misappropriating the goodwill of the Scout Fantasy brand.

3. Despite multiple demands, CBSi has refused to pay the amounts owed to Fulltime, cease and desist using the Scout Fantasy name and logo, and clarify for consumers that CBSi and Fulltime have parted ways. As fantasy football season approaches, Fulltime has been forced to file this action to seek relief from the Court's so that CBSi will stop misappropriating Fulltime's intellectual property and good will, stop confusing consumers, and pay Fulltime what it is owed.

PARTIES

4. Fulltime Fantasy Sports, LLC is a Delaware limited liability company with its principal place of business in Las Vegas, Nevada.

5. Defendant CBS Interactive Inc. is a Delaware corporation with its principal place of business in San Francisco, California.

JURISDICTION AND VENUE

6. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 because this is a civil action arising from CBSi's violations of Section 43(a)(1) of the federal Lanham Act for trademark infringement and false advertising. This Court has supplemental jurisdiction over the remaining state law claims pursuant to 28 U.S.C. § 1367.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) and (2) because CBSi has offices in New York City and because the action involves a claim for breach of a publishing contract that provides for "the exclusive jurisdiction and venue of the state and federal courts sitting in New York County, New York with respect to any dispute and/or claim and/or controversy arising under and/or in connection with this Agreement."

FACTS

8. Fulltime was founded in 2011 by Ian Ritchie and Scott Atkins with the purpose of providing premier fantasy sports content, online services and events to fantasy sports

enthusiasts.

9. To provide this content, Fulltime hired and contracted with, and still retains the services of, many well-known fantasy sports personalities with reputations as experts in daily and season-long fantasy sports competitions, including Dr. Roto, Shawn Childs, and Adam Ronis. These experts have provided guidance, predictions, rankings, and analysis for fantasy football, baseball, basketball, golf, hockey, and other sports.

10. Fulltime also provided its followers with unique tools, such as customizable player rankings and a draft pick trade analyzer, which attracted fantasy sports participants to Fulltime's website.

11. While some services and content were free, Fulltime also offered premium content to subscribers through a paid membership service.

12. Fulltime also ran various fantasy sports tournaments, including the Fantasy Football World Championships ("FFWC"). The FFWC is an annual high-stakes fantasy football tournament that starts with a weekend-long live draft and other events in Las Vegas, Nevada. The FFWC has been Fulltime's cornerstone event each year since the first FFWC in 2011.

13. Fulltime was able to build a substantial network of followers as the result of the products, services, events, and content that it offered.

14. In or around May 2014, Atkins and Ritchie began discussions with Scout Media Holdings, Inc. ("Scout Media") about the possibility of Scout Media acquiring Fulltime's assets. Scout Media was a subscription-based news and information service regarding a variety of topics targeting a male audience, including hunting, sports, and construction. However, at the time of the discussions, Scout Media did not have any regular fantasy sports offerings.

15. In or around June 2014, in anticipation of the acquisition, Fulltime began branding itself as "Scout Fantasy." This branding included Fulltime using the name Scout Fantasy in its website, subscriber mailings sent internationally, and radio programs broadcast throughout the United States.

16. Fulltime also established a social media presence under the name Scout Fantasy,

including claiming and using the @ScoutFantasy Twitter handle and Instagram account.

17. Fulltime’s most important social media account was its Facebook page, which Fulltime had operated since its founding. Fulltime used its Facebook page as a primary way to advertise its events (including the FFWC), services, and content. Fulltime began branding its Facebook page with the Scout Fantasy name beginning around June 2014.

18. Fulltime also began using the following logo in addition to the Scout Fantasy name:



Collectively, the name Scout Fantasy, the above logo, and related design marks are referred to herein as the “Scout Fantasy Trademark.”

19. Scout Media’s purchase of Fulltime’s assets was formalized in an Asset Purchase Agreement in December 2014 (the “Scout Media/Fulltime APA”).

20. Following the Scout Media/Fulltime APA, Scout Fantasy operated as a relatively independent division of Scout Media. Led by Atkins and Ritchie, the Scout Fantasy division of Scout Media continued to offer same the content, services, and tournaments that Fulltime had offered before the Scout Media/Fulltime APA. As the Scout Fantasy brand grew, it became recognizable in the fantasy sports industry and developed significant goodwill.

21. The 2016 FFWC was scheduled to take place at the Tropicana Hotel in Las Vegas the second week of September. Hundreds of participants had signed up to fly to Las Vegas and participate in the FFWC weekend of events. Thousands more were scheduled to participate online.

22. A few weeks prior to the event, Atkins and Ritchie learned that (1) the segregated fantasy prize fund to be held by Scout Media was missing approximately \$870,000 that was necessary to pay FFWC participants, and (2) Scout Media had not, and could not, pay the

approximately \$70,000 required to secure the Tropicana Hotel for the FFWC. Because New York residents participated in the FFWC, Scout Media was required by New York law to segregate fantasy prize funds from other accounts so that the prize funds would be available to pay fantasy competition winners. However, Scout Media had instead commingled the fantasy prize funds with its general operating accounts and used the fantasy prize funds to pay unrelated obligations.

23. If Scout Media had failed to host the 2016 FFWC, it would have been the death knell of the Scout Fantasy brand and business. Scout Media would have had to issue thousands of refunds to FFWC participants, but it did not have the available cash to do so. The reputations of the Scout Fantasy brand and of Fulltime's and Scout Media's executives would have been permanently tarnished.

24. Accordingly, on September 1, 2016, Fulltime and Scout Media entered into a blanket Rescission Agreement rescinding the Scout Media/Fulltime APA. Scout Media and Fulltime agreed that the rescission was necessary so that Fulltime could preserve the goodwill of the Scout Fantasy brand, take back the Scout Fantasy assets (services, products, content), and hold the 2016 FFWC as planned.

25. The parties specifically agreed that Fulltime would "continue to operate under the 'Scout Fantasy' brand," with the goal that rescission would result in "no disruption to the members or ascertainable differences to the public."

26. The intent of the Rescission Agreement was to restore to Fulltime the ownership of and the exclusive right to operate Scout Fantasy and use the Scout Fantasy Trademark following the rescission.

27. Fulltime paid the \$70,000 to the Tropicana Hotel and the 2016 FFWC went forward as planned, under the Scout Fantasy name. Fulltime also funded the approximately \$870,000 needed to replenish the prize fund, so that all winners at the FFWC could receive their prizes.

28. Without Fulltime's payment of the \$940,000 to save the FFWC, Scout Media

would have been forced into immediate bankruptcy in September 2016 because it had insufficient cash to hold the event or to issue refunds to all the participants.

29. Instead, Scout Media’s bankruptcy was delayed for about three months as its executives continued to try to save the business and obtain outside capital. However, on or around December 8, 2016, Scout Media filed for bankruptcy in the Southern District of New York.

30. CBSi’s parent company purchased many of Scout Media’s assets out of bankruptcy via an Asset Purchase Agreement between Scout Media, Inc. and CBS 247 Inc. dated January 24, 2017 (the “Scout/CBS APA”). The Scout/CBS APA specifically listed as an excluded asset: “All of the property and assets of Seller owned, used or held for use in connection with Full Time Fantasy Sports LLC, other than any customer lists and information (including credit information), software, websites and domain names.”

31. The Scout/CBS APA listed a general “Scout” trademark as an acquired asset, but did not list the Scout Fantasy brand or trademark. Scout Media could not transfer to CBSi what it did not own, and it did not own any rights to the Scout Fantasy name or Scout Fantasy Trademark.

32. On February 13, 2017, Fulltime and CBSi entered into a Publisher Agreement for the purpose of allowing CBSi to license the content, services, tools, and intellectual property associated with the Scout Fantasy brand.

33. Under the Publisher Agreement, the parties acknowledged that Fulltime “owned and/or controlled” the following logos:



§ 2(t) and Exhibit C. Fulltime expressly granted CBSi a non-exclusive license to use these logos only during the term of the Publisher Agreement. § 5(f).

34. After (and only after) entering into the Publisher Agreement, CBSi began using the Scout Fantasy Trademark on its website and in consumer communications.

35. CBSi's primary use of the Scout Fantasy Trademark was to sell various levels of "Scout Fantasy" memberships, which allowed subscribers to use the content (including articles written by Fulltime's fantasy sports experts), services and products provided by Fulltime.

36. The Publisher Agreement provided that "The Parties shall mutually agree on the placement of an 'opt-in' (the 'Opt-In') on the registration page of the Scout Fantasy Sports Service..." § 4(l). The opt-in would have allowed users who signed up for Scout Fantasy memberships to have their information shared with Fulltime, rather than simply kept with CBSi.

37. The opt-in was of critical importance to Fulltime because it was the only way for Fulltime to get information about the consumers who signed up for Scout Fantasy memberships during the term of the Publisher Agreement. This consumer information was valuable because these individuals were the most likely to be interested in Fulltime's services if and when it were to terminate the Publisher Agreement and return to offering its services and content directly to consumers through its own subscriptions. Such a termination was a real possibility because the term of the Publisher Agreement (§ 3(a)) was approximately three months, continuing thereafter on a month-to-month basis until terminated.

38. CBSi representatives assured Fulltime that CBSi was in the process of adding the opt-in to its website and/or subscriber sign-up form, where it would be placed "on the bottom of the page."

39. However, contrary to these representations, CBSi failed to place any opt-in on its website or subscriber sign-up form.

40. As a result, Fulltime lost the opportunity to obtain user data and contact information for all of the individuals who signed up for Scout Fantasy memberships during the

term of the Publisher Agreement.

41. At the time Fulltime and CBSi entered into the Publisher Agreement, the Scout Fantasy Facebook page had reached approximately 60,000 followers.

42. Fulltime's Facebook followers were particularly valuable because they were a broader audience than paying subscribers, with a demonstrated interest in the content and services Fulltime offered. The Facebook followers also included many of the Scout Fantasy subscribers, which gave Fulltime an alternative to email for communicating with these subscribers. Communicating through Facebook was also a crucial protection for Fulltime in case CBSi did not obtain subscriber consent to share information with Fulltime, as was contemplated in the opt-in provision of the Publisher Agreement.

43. Upon information and belief, CBSi internally values Facebook followers at approximately \$3 each, although many resources value them at a higher amount.

44. Although Fulltime maintained ownership and control of the Facebook page during the term of the Publisher Agreement, it entrusted CBSi with the password so that CBSi could "cross-post" content about other CBSi offerings to Fulltime's followers.

45. On or around March 7, 2017, CBSi, without Fulltime's permission, merged Fulltime's Facebook page with another CBSi Facebook page. The merger caused Fulltime's unique Facebook page and set of followers to be irreversibly lost, leaving Fulltime without its primary point of contact with many of its followers.

46. CBSi immediately admitted that the Facebook page merger was a mistake and had not been authorized by Fulltime, but stated that it could not reverse the merger. While CBSi indicated they would make it right, CBSi took no steps to compensate Fulltime for the lost Facebook followers.

47. The Publisher Agreement in Section 6 and Exhibit H provided that during its term, CBSi would make monthly payments to Fulltime of 70% of its subscription revenue and 35% of the advertising generated in connection with Fulltime's content and services.

48. From the beginning, however, errors and discrepancies arose in the CBSi's

payments. CBSi provided Fulltime with access to a dashboard and monthly reporting related to the number of Scout Fantasy subscribers. The dashboard data and the monthly reporting data were inconsistent with each other and both were inconsistent with what CBSi actually paid Fulltime.

49. The advertising numbers provided by CBSi to Fulltime were also inconsistent with other analytics, and the payments received by Fulltime were significantly less than other publishers on the CBSi network, indicating an error in CBSi's accounting.

50. In 2018, CBSi entirely failed to make the payments due on January 15, 2018 and February 15, 2018.

51. On February 27, 2018, Fulltime terminated the Publisher Agreement effective as of March 13, 2018, due to CBSi's material breach.

52. The Publisher Agreement at Section 6 and Exhibit H requires CBSi to continue making payments to Fulltime for a period of one year following termination. CBSi has not made payments as required on March 15, April 15, May 15, and June 15, 2018.

53. Finally, in April 2018, CBSi paid some amounts to Fulltime, ostensibly for revenues attributable to January-March 2018. The amounts paid were significantly less than CBSi owed. CBSi provided inaccurate reporting of advertising and subscription revenue to justify its payment. CBSi has not made any further payments to Fulltime.

54. On March 21, 2018, just a week after termination of the Publisher Agreement, CBSi filed an application (Serial Number 87843092) to register the following Scout Fantasy trademark with the U.S. Patent and Trademark Office without any notice to Fulltime, in a bad-faith attempt to co-opt the intellectual property owned exclusively by Fulltime:



55. The CBSi trademark application falsely represents that CBSi commenced first use

From: ScoutFantasy.com on Scout <no-reply@newsletter.scout.com>
Date: Fri, Jun 22, 2018, 1:08 PM
Subject: Scout Fantasy Special (5 Months FREE) + Optimal 6/22 MLB DFS Picks



of that mark in United States commerce on June 30, 2014. The CBSi trademark application was filed by CBSi with knowledge that it did not own the Scout Fantasy trademark, thereby committing a fraud on the United States Patent and Trademark Office.

56. In addition to its improper payments, CBSi has engaged in unfair and unlawful tactics to confuse consumers and prevent subscribers from leaving CBSi's services for Fulltime.

57. CBSi has continued to use the Scout Fantasy Trademark on its website, in its advertising, and in its email blasts to subscribers and potential subscribers. For example, even after multiple demands to cease and desist, CBSi sent the following email on June 22, 2018:

58. The email solicited subscriptions to CBSi's fantasy sports service at a deep discount, offering six months service for the price of one month. Upon information and belief, CBSi did this in order to lock in subscribers through the fantasy football season before such subscribers discovered that Fulltime's content was no longer available through CBSi. Upon information and belief, CBSi had never offered deep discounts like this before and did so in this case only to wrongfully capitalize on the misappropriated Scout Fantasy Trademark and capture

Fulltime's potential subscribers during the peak fantasy sports season.

59. CBSi's website continues to contain links to various Fulltime resources and websites, without any permission from Fulltime to do so.

60. CBSi continues to list Fulltime's fantasy sports experts such as Dr. Roto and Shawn Childs on its website and in its advertising, falsely implying that new subscribers to CBSi's services will have access to new content created by these experts.

61. CBSi has also refused to cancel or refund the subscriptions of multiple consumers who wish to subscribe to Fulltime's services directly.

62. CBSi has continued to reference Fulltime's Twitter account in its communications with consumers in a manner that suggests that Fulltime's Twitter account is affiliated with CBSi's own sports content.

63. Numerous consumers have contacted Fulltime's employees to say they are confused about where they can find the "real" Scout Fantasy content, including its fantasy sports tools and expert commentary.

64. Fulltime has repeatedly demanded that CBSi cease and desist its use of the Scout Fantasy Trademark; stop identifying Fulltime's social media, services, and experts as associated with CBSi; and clarify for consumers that CBSi and Fulltime have parted ways. CBSi has refused.

65. The peak season for fantasy sports in general is football season, and the season is even more critically important to Fulltime due to its cornerstone event, the FFWC.

66. The fast-approaching 2018 fantasy football season and September 2018 FFWC provide a crucial opportunity for Fulltime to rebuild its network of subscribers and followers following its separation from CBSi.

67. CBSi's continued use of the Scout Fantasy Trademark and other tactics to intentionally confuse consumers, as detailed above, is likely to cause irreparable harm to Fulltime and the goodwill of the Scout Fantasy Trademark and brand if CBSi does not cease its use before the fantasy football season and peak FFWC advertising begin.

FIRST CAUSE OF ACTION: TRADEMARK INFRINGEMENT

(Lanham Act, 15 U.S.C. § 1125(a)(1)(A))

68. Fulltime realleges and incorporates by reference the above paragraphs 1 through 67 as if fully set forth herein.

69. Fulltime has used the Scout Fantasy Trademark in commerce throughout the United States since approximately June 2014, when it began branding itself as Scout Fantasy on its website, social media, radio broadcasts, etc. in anticipation of its acquisition by Scout Media.

70. In 2016, Fulltime reacquired exclusive ownership of the Scout Fantasy Trademark by virtue of the Rescission Agreement. An exclusive assignment of the Scout Fantasy Trademark was required to restore Fulltime as nearly as possible to the position it occupied prior to the Scout Media/Fulltime APA, where services to its subscribers was recognizable and uninterrupted. In exchange for the exclusive assignment, Fulltime paid approximately \$940,000 to save the 2016 FFWC, keeping Scout Media out of bankruptcy for several more months.

71. CBSi acknowledged Fulltime's ownership of the Scout Fantasy Trademark by accepting a license from Fulltime to use the Scout Fantasy Trademark under the terms of the Publisher Agreement.

72. CBSi is estopped from denying Fulltime's ownership of the Scout Fantasy Trademark.

73. Following termination of the Publisher Agreement, CBSi has improperly used and continues to use the Scout Fantasy Trademark in commerce without authorization, including on CBSi's website and in its communications with subscribers.

74. CBSi's continued, unauthorized use of the Scout Fantasy Trademark has created and will continue to create significant confusion with consumers who wish to obtain Fulltime's services, such as its fantasy sports tools and expert commentary.

75. CBSi's continued, unauthorized use of the Scout Fantasy Trademark has deceived

and will continue to deceive consumers into falsely believing that Fulltime sponsors or endorses CBSi's products and services relating to fantasy sports.

76. CBSi's unauthorized use and infringement of the Scout Fantasy Trademark is willful, as evidenced by its continued use of the Scout Fantasy Trademark in the face of Fulltime's demands to cease and desist, and CBSi's attempt to register a particular Scout Fantasy trademark and design logo for the first time, without notice to Fulltime, after termination of the Publisher Agreement.

77. CBSi's ongoing trademark infringement has caused, and will continue to cause, immediate and irreparable injury to Fulltime, including injury to Fulltime's business, reputation and goodwill, for which there is no adequate remedy at law.

78. As a result of CBSi's willful trademark infringement, Fulltime has suffered damages in an amount to be proven at trial.

79. Pursuant to 15 U.S.C. § 1117, Fulltime is entitled to an award of CBSi's profits on its unauthorized use of the Scout Fantasy Trademark and Fulltime's damages, including the cost of lost subscribers and lost advertising revenue.

80. Fulltime is also entitled to injunctive relief under 15 U.S.C. § 1116 restraining CBSi its agents, employees, representatives and all persons acting in concert with CBSi from engaging in future acts of trademark infringement and ordering removal of all of CBSi's wrongful use of the Scout Fantasy Trademark in any forum, including advertisements, online postings, and any other communications with subscribers or consumers.

81. Pursuant to 15 U.S.C. § 1117, Plaintiff is further entitled to recover the costs of this action.

82. Upon information and belief, CBSi's conduct was undertaken willfully and with the intention of causing confusion, mistake or deception, making this an exceptional case entitling Fulltime to recover additional damages and reasonable attorneys' fees under 15 U.S.C. §1117(a).

SECOND CAUSE OF ACTION: FALSE ADVERTISING

(Lanham Act, 15 U.S.C. § 1125(a)(1)(B))

83. Fulltime realleges and incorporates by reference the above paragraphs 1 through 82 as if fully set forth herein.

84. CBSi has published and made in this District false and misleading representations of fact in commercial advertising and promotions regarding Fulltime's fantasy sports experts, including Dr. Roto and Shawn Childs, falsely implying that new subscribers to CBSi's services will have access to new content created by these experts.

85. CBSi has continued to reference Fulltime's Twitter account in its communications with consumers in a manner that falsely suggests that Fulltime's Twitter account is affiliated with CBSi's own sports content.

86. These statements actually deceive, or have a tendency to confuse or deceive, a substantial segment of the public, concerning the relationship between Fulltime and CBSi, and will cause the public to associate CBSi's website and fantasy sports media promotions and productions with Fulltime, which will cause actual and irreparable harm to Fulltime's business reputation and goodwill, in addition to loss of revenues.

87. CBS's deception is material in that it is likely to influence the subscription and purchasing decisions of the public who follow and participate in fantasy sports, and particularly those members of the public who have followed and continue to follow Fulltime.

88. CBSi's false and misleading commercial advertising statements and omissions misrepresent the nature and characteristics of CBSi's fantasy sports offerings and injure both consumers and Fulltime.

89. CBSi's false and misleading commercial advertising statements and omissions violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

90. CBSi has caused, and will continue to cause, immediate and irreparable injury to Fulltime, including injury to Fulltime's business, reputation and goodwill, for which there is no

adequate remedy at law.

91. Fulltime is, therefore, entitled to injunctive relief under 15 U.S.C. § 1116, restraining CBSi its agents, employees, representatives and all persons acting in concert with CBSi from engaging in future acts of false advertising and ordering removal of all of CBI's false and misleading advertisements, online postings, and any other communications with subscribers or consumers.

92. Pursuant to 15 U.S.C. § 1117, Fulltime is entitled to an award of CBSi's profits derived from its false and misleading commercial advertising statements and omissions, and Fulltime's damages, including the cost of lost subscribers and lost advertising revenue.

93. Pursuant to 15 U.S.C. § 1117, Plaintiff is further entitled to recover the costs of this action.

94. Upon information and belief, CBSi's conduct was undertaken willfully and with the intention of causing confusion, mistake or deception, making this an exceptional case entitling Fulltime to recover additional damages and reasonable attorneys' fees under 15 U.S.C. §1117(a).

THIRD CAUSE OF ACTION: BREACH OF CONTRACT

(New York Common Law)

95. Fulltime realleges and incorporates by reference the above paragraphs 1 through 94 as if fully set forth herein.

96. The Publisher Agreement in Section 6 and Exhibit H requires CBSi to make monthly payments to Fulltime of 70% of its subscription revenue and 35% of the advertising generated in connection with Fulltime's content and services during the term of the Agreement and for one year following its termination.

97. CBSi materially breached these provisions by its untimely and insufficient payments for revenues through March 2018 during the term of the Publisher Agreement and

complete failure to make any payments thereafter that are due on the 15th of each month for a year following termination.

98. The Publisher Agreement required CBSi to provide an opt-in option for subscribers to share their user data and contact information with Fulltime. § 4(1).

99. CBSi materially breached this provision by failing to implement any opt-in, despite its contractual obligation under the Publisher Agreement and its representation that it would do so.

100. As a result of CBSi's breaches of the Publisher Agreement, Fulltime is entitled to damages in an amount to be proven at trial.

FOURTH CAUSE OF ACTION: CONVERSION

(New York Common Law)

101. Fulltime realleges and incorporates by reference the above paragraphs 1 through 100 as if fully set forth herein.

102. Fulltime was at all times the rightful owner of the Scout Fantasy Facebook page.

103. CBSi intentionally interfered with Fulltime's ownership rights by merging Fulltime's Facebook page into its own without authorization, causing Fulltime to irretrievably lose a primary point of contact with 60,000 followers.

104. Fulltime has been damaged by CBSi's actions in an amount to be proven at trial, but no less than \$180,000.00 (\$3/follower for 60,000 followers).

FIFTH CAUSE OF ACTION: UNLAWFUL DECEPTIVE ACTS AND PRACTICES

(New York General Business Law § 349)

105. Fulltime realleges and incorporates by reference the above paragraphs 1 through 104 as if fully set forth herein.

106. CBSi has willfully and in bad faith, without Fulltime's authorization or consent, misappropriated Fulltime's efforts and success in building up the Scout Fantasy brand by acts

including but not limited to (a) merging Fulltime's Facebook page into its own without authorization, (b) continuing to use the Scout Fantasy Trademark following termination of the Publisher Agreement, (c) continuing to list Fulltime's fantasy sports experts and employees on CBSi's fantasy sports webpage, (d) refusing to cancel or refund the subscriptions of consumers who now want to subscribe to Fulltime's services directly, (e) including links on CBSi's website to various Fulltime fantasy sports resources and websites, and (f) referencing Fulltime's Twitter account in a manner that falsely suggests it is affiliated with CBSi's own sports content.

107. CBSi's unauthorized use of copies or simulations of the Scout Fantasy Trademark is likely to cause and is causing confusion, mistake and deception among the public as to the origin, administration and sponsorship of CBSi's fantasy sports business and is likely to deceive the public into believing that such CBSi business originates from, is associated with, or is otherwise authorized by Fulltime.

108. CBSi's foregoing acts, which are misleading to a reasonable consumer, constitute deceptive acts and business practices of a recurring nature, and have caused, and will continue to cause, injury to the general public interest, as well as to Fulltime, in violation of New York General Business Law § 349.

109. The aforesaid acts of CBSi have caused injury to Fulltime, which has no adequate remedy at law. Unless said acts are restrained by this Court, such acts will continue to cause Fulltime to suffer irreparable injury.

110. As a result of CBSi's violation of New York General Business Law § 349, Fulltime is entitled to damages in an amount to be proven at trial together with reasonable attorneys' fees.

111. Fulltime is further entitled to injunctive relief, including a temporary restraining order, preliminary injunction, and/or permanent injunction restraining CBSi from using the Scout Fantasy Trademark in any fashion and from continuing its consumer confusion tactics and ordering CBSi to execute all necessary and proper documents to acknowledge and transfer to Fulltime the sole and exclusive ownership of the Scout Fantasy Trademark and all related

designs, logos, marks, and domain names.

SIXTH CAUSE OF ACTION: UNFAIR COMPETITION

(New York Common Law)

112. Fulltime realleges and incorporates by reference the above paragraphs 1 through 111 as if fully set forth herein.

113. Fulltime has built up valuable goodwill in the Scout Fantasy Trademark.

114. CBSi's use of the Scout Fantasy Trademark is likely to and does permit CBSi to palm off its fantasy sports business as those of Fulltime, to the detriment of Fulltime and the unjust enrichment of CBSi.

115. CBSi, upon information and belief, with full knowledge of the rights of Fulltime and without authorization from Fulltime, intended to and did trade, and continues to trade, on the goodwill associated with the Scout Fantasy Trademark, and has misled and will continue to mislead the public into assuming a connection between Fulltime and CBSi by acts including but not limited to (a) merging Fulltime's Facebook page into its own without authorization, (b) continuing to use the Scout Fantasy Trademark following termination of the Publisher Agreement, (c) continuing to list Fulltime's fantasy sports experts and employees on CBSi's fantasy sports webpage, (d) refusing to cancel or refund the subscriptions of consumers who now want to subscribe to Fulltime's services directly, (e) including links on CBSi's website to various Fulltime fantasy sports resources and websites, and (f) referencing Fulltime's Twitter account in a manner that falsely suggests it is affiliated with CBSi's own sports content.

116. The acts of CBSi mislead and deceive the public as to the source of CBSi's services, permit and accomplish the palming off of CBSi's services as those of Fulltime and falsely suggest a connection with Fulltime, and therefore constitute acts of unfair competition with Fulltime in violation of the laws of the State of New York.

117. CBSi has realized unjust profits, gains and advantages as a proximate result of its unfair competition.

118. CBSi's acts have caused and will continue to cause Fulltime irreparable harm unless enjoined by this Court. Fulltime has no adequate remedy at law.

119. As a result of CBSi's acts of unfair competition, Fulltime is entitled to an award of CBSi's unjust profits.

120. Fulltime is further entitled to injunctive relief, including a temporary restraining order, preliminary injunction, and/or permanent injunction restraining CBSi from using the Scout Fantasy Trademark in any fashion and from continuing its consumer confusion tactics and ordering CBSi to execute all necessary and proper documents to acknowledge and transfer to Fulltime the sole and exclusive ownership of the Scout Fantasy Trademark and all related designs, logos, marks, and domain names.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For an award of damages that Fulltime has incurred due to CBSi's willful trademark infringement, false advertising, breach of contract, conversion, unlawful deceptive acts and practices, and unfair competition, in an amount to be determined at trial;
2. For an award of CBSi's profits made from its wrongful use of the Scout Fantasy Trademark, false advertising, consumer confusion, and unfair competition;
3. For an award of damages in favor of Fulltime in an amount necessary for corrective advertising as a result of CBSi's trademark infringement and false advertising;
4. For a temporary restraining order, preliminary injunction, and/or permanent injunction (a) restraining CBSi and its agents and representatives, and those acting in concert with them, from using the Scout Fantasy Trademark and (b) ordering CBSi to execute all necessary and proper documents to acknowledge and transfer to Fulltime the sole and exclusive ownership of the Scout Fantasy Trademark and all related designs, logos, marks, and domain names;
5. For attorneys' fees and costs pursuant to 15 U.S.C. § 1117 and all other applicable

law; and

6. For such other and further relief as this Court deems just and equitable.

JURY TRIAL DEMANDED

Plaintiff demands trial by jury on all causes of action.

DATED: New York, New York
July 13, 2018.

HERRICK, FEINSTEIN LLP

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