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Counsel for Defendant News America Marketing
In-Store Services, Inc.

FLOORGRAPHICS, INC.

Plaintiffs,

v.

NEWS AMERICA MARKETING
IN-STORE SERVICES, INC., *et al.*,

Defendants.

:
: **UNITED STATES DISTRICT COURT**
: **DISTRICT OF NEW JERSEY**
:
: No. 04-CV-3500 (AET)
:
:
: Hon. Anne Elise Thompson
:
: Magistrate Judge John J. Hughes
:
:

**ANSWER OF DEFENDANTS NEWS AMERICA
MARKETING IN-STORE SERVICES, LLC AND NEWS AMERICA
MARKETING IN-STORE, LLC TO THIRD AMENDED COMPLAINT**

Defendants News America Marketing In-Store Services, LLC (“NAMIS”), a corporation with its principal place of business at 303 East Wacker Drive, Chicago, Illinois 60611, and News America Marketing In-Store, LLC (“NAMI”), a corporation with its principal place of business at 20 Westport Road, Wilton, Connecticut 06897 (collectively, “Defendants”), answer Plaintiff’s complaint as follows:

A. The Parties

1. Plaintiff FLOORgraphics, Inc. (“FGI”) is a Pennsylvania corporation with its principal place of business at American Metro Center, 242 Princeton Avenue, Suite 120, Hamilton, New Jersey, 08619.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1, and therefore deny those allegations.

2. Defendant News America Marketing In-Store Services, Inc. (“NAMIS”) is a Delaware corporation with its principal place of business at 20 Westport Road, Wilton, Connecticut, 06897.

ANSWER: Defendants admit that NAMIS is a Delaware corporation and deny the remaining allegations in paragraph 2. Further answering, Defendants state that NAMIS is an LLC and its principal place of business is at 303 E. Wacker Drive, Chicago, IL 60611.

3. Defendant News America Marketing In-Store, Inc. (“NAMI”) is a Delaware corporation with its principal place of business at 303 E. Wacker Drive, Chicago, IL 60611. Defendants are collectively referred to herein as “News.” News is a division of News Corp. Ltd.

ANSWER: Defendants admit that NAMI is a Delaware corporation and deny the remaining allegations in paragraph 3. Further answering, Defendants state that NAMI is an LLC and its principal place of business is at 20 Westport Road, Wilton, CT 06897.

B. Venue and Subject Matter Jurisdiction

4. Venue is proper in this district pursuant to 28 U.S.C. §1391(a).

ANSWER: Defendants state that the allegations in paragraph 4 constitute a legal conclusion as to which no answer is required.

5. This Court has subject matter jurisdiction of this dispute pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1332 because the parties are citizens of different states and the amount in controversy exceeds \$100,000 exclusive of interest and costs.

ANSWER: Defendants state that the allegations in paragraph 5 constitute a legal conclusion as to which no answer is required.

6. FGI was founded in Cherry Hill, New Jersey in 1996 and pioneered the use of floor advertising in retail stores. In floor advertising, FGI introduced a new and effective means of extending the advertising campaigns of consumer product goods manufacturers (“CPGs”) directly to the point-of-sale of the CPG’s product inside retail stores.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 6, and therefore deny those allegations. Defendants deny the allegations in the second sentence of paragraph 6.

7. In its fiscal year ending June 30, 1998, FGI had only \$800,000 in annual revenues, but the effectiveness of floor advertising quickly became apparent to CPGs, and by June 30, 2001, FGI’s floor revenues exceeded \$55 million. Inc. Magazine’s 2002 annual survey named FGI the 39th fastest growing private company in the nation. In their 2003 survey the following year, FGI rose to the 11th fastest growing company in the Inc. survey, and FGI was placing floor advertising, as well as other forms of in store-marketing programs, in more than 10,000 stores across the country. Richard Rebh, FGI’s chief executive, and George Rebh, FGI’s Executive Vice President, were named New Jersey Entrepreneurs of the Year in the marketing, manufacturing, and distribution category by Ernst & Young, in recognition of the company’s successful establishment of floor advertising as a new business.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7, and therefore deny those allegations.

8. The essence of FGI’s business is developing marketing programs that CPGs use to increase sales to shoppers in grocery stores. By placing with large, colorful decals on the floor of retail stores directly in front of the featured product, floor advertising enables CPGs, for the first time, to extend their advertising campaigns right up to the point where shoppers make the final choice of which products to put in their shopping cart.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 8, and therefore deny those allegations. Defendants deny the allegations in the second sentence of paragraph 8.

9. FGI negotiates contracts with both retail chains and CPGs. First, FGI contracts with retail chains for the right to place FGI's program in their stores. Retail chains permitting in-store marketing programs – such as floor advertising, at-shelf coupons, at-shelf signs, and shopping cart placards -- include mass merchandisers such as Kmart Corporation (“Kmart”) and well-known national and regional grocery chains such as Safeway, Inc. (“Safeway”), The Kroger Co. (“Kroger”), The Great Atlantic & Pacific Tea Company (“A&P”), Winn-Dixie Stores, Inc. (“Winn-Dixie”), Food Lion, LLC (“Food Lion”), Ahold USA (“Ahold”), and Albertsons Inc. (“Albertsons”).

ANSWER: Defendants admit the allegations in paragraph 9.

10. With retail contracts in hand, FGI can contract with CPGs, such as Procter & Gamble, Kellogg's, and Gillette, who pay FGI to create and install floor advertisements in FGI's network of retail stores.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10, and therefore deny those allegations.

C. News' Attempts to Destroy FGI

11. FGI's rise and the rapid adoption of floor advertising did not go unnoticed by News. Until 1997, News was primarily in the business of selling booklets of coupons promoting CPGs' products which were delivered to homes in the Sunday newspapers. But in 1997, News purchased a company called ActMedia. ActMedia dominated the in-store marketing business, selling at-shelf coupons (“instant coupon machines”), shelf signs, shelf information handouts (“take ones”), and shopping cart placards. Thereafter, News sought to expand its in-store programs to include floor advertising and FGI and News became direct competitors for floor advertising contracts with retailers and CPGs.

ANSWER: Defendants deny the allegations in paragraph 11, except that they admit that in 1997 The News Corporation, Ltd. acquired ActMedia, and that Defendants offer floor advertising in competition with FGI. But News was not satisfied with simply competing with FGI. Beginning in or about 1999, News commenced a deliberate and malicious campaign against FGI so that News could have exclusive control of all major in-store marketing programs.

12. At a meeting in July 1999, News' Chief Executive Officer told FGI that News was interested in buying FGI, but if FGI refused to sell and chose instead to compete with News for in-store

programs other than floor advertising – such as instant coupon machines, shelf ads, take ones, or shopping cart placards – News would destroy FGI.

ANSWER: Defendants deny the allegations in paragraph 12.

13. News then began offering a take-it or leave-it proposition to retailers: either give News exclusive rights to all the major in-store advertising and promotion programs in their stores – floor ads, shelf ads, at-shelf coupons, take ones, and cart placards, or be excluded from all of News' programs, which News, at the time, uniquely provided, which, in turn, would cause the retailers to stop doing floor advertising business with FGI.

ANSWER: Defendants deny the allegations in paragraph 13.

14. A&P balked at News' demand for this all-or-nothing exclusivity and asked FGI to expand beyond floor advertising into the in-store advertising and promotion programs offered exclusively by News. At considerable expense, FGI agreed and developed its own instant coupon dispensers, shopping cart placards, and other in-store marketing fixtures and programs.

ANSWER: Defendants deny the allegations in paragraph 14.

15. As a result of FGI's refusal to sell its business to News and FGI's expansion beyond floor advertising, upon information and belief News executives authorized a multi million [sic] war chest to accomplish precisely what its Chief Executive Officer had threatened – to destroy FGI.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15, and therefore deny those allegations.

16. In the ensuing years, News employed numerous illicit tactics in a prolonged and concerted effort to destroy FGI through illegal, anti-competitive, and unfair business practices. As examples, News has: (a) engaged in illegal computer espionage by breaking into FGI's password-protected computer system and obtaining proprietary FGI information; (b) disseminated false and misleading advertising and information about FGI to FGI's customers to drive them away, including falsehoods questioning FGI's solvency and ability to perform on its contracts; (c) orchestrated a mass resignation of FGI's advertising sales staff, who then took their knowledge of FGI's retail and CPG contracts to News; (d) harassed FGI employees by mailing a series of News press releases to employees' homes in an effort to break their spirit; and (e) removed FGI-placed advertisements to replace them with News' own advertisements.

ANSWER: Defendants deny the allegations in paragraph 16.

17. News has also sought to destroy FGI's business through other unfair trade practices, including: (a) threatening retailers to stop doing business with FGI or else News would reduce its payments for existing News programs or deny the retailer participation in those programs altogether; (b) refusing to submit separate bids to retailers (for instance, a separate bid for floor advertising and a

separate bid for shelf ads) and instead requiring that all in-store programs be tied together and contracted as a single bundle; (c) creating bundled bids to retailers that allocate unrealistically large payments to the floor advertising portion to induce retailers not to do business separately with FGI for floor advertising alone; (d) offering large payments to a retailer during the term of FGI's contract in order to acquire future program rights; and (e) including in its retail contracts a provision giving News a blanket right of first refusal on any new in-store marketing program idea.

ANSWER: Defendants deny the allegations in paragraph 17.

18. News has also engaged in unfair, improper and illegal conduct in its dealings with CPGs in order to destroy FGI, including upon information and belief, but not limited to, (a) offering to pay CPGs not to purchase advertising from FGI; (b) creating confusion in the marketplace by disseminating false information designed to induce CPG's not to do business with FGI; (c) misrepresenting the number of stores in which News provided floor programs; (d) spreading rumors that FGI was going out of business; (e) misrepresenting its right to use certain exclusive patent rights; (f) misinforming CPGs that FGI has breached and would continue to breach advertising contracts; and (g) misinforming advertisers that FGI breached its contracts with retail chains.

ANSWER: Defendants deny the allegations in paragraph 18.

19. All of these improper actions by News have injured FGI's business, and, as well as individually being unlawful, are part of a pattern and practice of tortuous [sic] misconduct. Illustrative of News's violation of FGI's rights is News's intentional, deliberate, and repeated invasions of FGI's proprietary and confidential computer system. At its offices in New Jersey, FGI maintains a secure computer system that houses some of the most sensitive, confidential, and non-public information concerning FGI's business. The computer system, access to which is restricted to certain FGI employees and FGI's retailer clients who have been given user names and passwords contains highly proprietary, confidential and trade secret information concerning all the program activity FGI has scheduled with retailers for upcoming advertising cycles, as well as previous cycles.

ANSWER: Defendants deny the allegations in paragraph 19.

20. Investigation shows that on at least eleven separate occasions between October 2003 and January 2004, News intentionally, knowingly, and without authorization breached FGI's secure computer system and repeatedly accessed, viewed, took and obtained FGI's most sensitive and private information concerning its past and upcoming advertising and marketing programs. In doing so, News accessed FGI's computer system in New Jersey from a News computer believed to be operating in or around Hartford, Connecticut.

ANSWER: Defendants deny the allegations in the first two sentences in paragraph 20.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the last two sentences of paragraph 20, and therefore deny those allegations.

21. FGI was first alerted to the fact that News might possess FGI's confidential information on January 14, 2004, when a CPG asked FGI how News might know of an upcoming floor advertising program that should have been known only to the CPG and FGI. The CPG had been asked by News why the program was being run with FGI, but not with News, in an attempt to secure more revenues for News and undercut FGI in the marketplace.

ANSWER: Defendants deny the allegations in paragraph 21.

22. FGI's subsequent investigation revealed repeated breaches of FGI's computer system – including access to the specific information relative to the CPG inquiry noted above – and traced the unauthorized access to a computer with an IP address registered at the time to News.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22, and therefore deny those allegations.

23. FGI promptly altered its security systems to frustrate further break-ins by News, but damage had already been done. In the months after the break-ins, News took away important contracts from major FGI retail customers, including Safeway, Winn-Dixie, Piggly Wiggly, and Basha's. On information and belief, News was able to win these retailer contracts away from FGI by using the confidential, proprietary, and trade secret information it illicitly gained by breaking into FGI's computer system.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23, and therefore deny those allegations.

24. News also made false and deceptive advertising a staple of its campaign to destroy FGI. News repeatedly made false or misleading statements about FGI's goods and services in News' commercial advertising and promotions. FGI's advertised goods, services, and communications traveled in interstate commerce.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that FGI promptly altered its security systems, and therefore deny that allegation. Defendants deny the remaining allegations in paragraph 24. Further answering, Defendants state that various retailers have entered into contracts with Defendants that became effective following the expiration of those retailers' contracts with FGI, and other retailers have entered into contracts with FGI that became effective following the expiration of those retailers' contracts with Defendants.

25. News widely circulated letters, flyers, and other communications falsely disparaging FGI's business to the companies representing the life-blood of FGI's advertising business – the major CPGs advertising with FGI nationwide. For example, News falsely claimed that FGI failed to install over half of the advertisements for which CPGs had contracted. Other News promotions sent to CPGs claimed that “in order for FGI to financially afford relationships” with retailers, FGI must “cut corners” and “compromise[d] the quality of their in-store programs.”

ANSWER: Defendants deny the allegations in paragraph 25.

26. News also falsely advertised and promoted its own goods and services. For example, on information and belief, News repeatedly misrepresented the size of the network of retail stores in which it had the exclusive right to place in-store marketing programs. Additionally, News claimed it had a “dedicated in-house field force that is 10,000 + people strong.” News also issued a false and misleading press release and store list touting the addition of large retailers to its network at the same time that FGI had such retailers under contract.

ANSWER: Defendants deny the allegations in paragraph 26.

27. News continued its false advertising and promotions through a concerted rumor campaign designed to drive retailers and CPGs away from FGI and toward News. Through repeated telephone calls and e-mails to FGI's existing and potential customers, News employees and agents falsely portrayed FGI as in breach of its contractual obligations to retailers. News also falsely painted FGI as a company on the verge of insolvency that would likely default on its retailer and advertiser contracts.

ANSWER: Defendants deny the allegations in paragraph 27, except that they admit that they have a dedicated in-house field force comprised of more than 10,000 employees, and have stated that fact publicly.

28. On information and belief, News' statements involved actual deception and/or a tendency to deceive the intended audience: a substantial portion of CPGs and retailers. News' claims in its advertisements and promotions were literally false, and numerous other claims were misleading.

ANSWER: Defendants deny the allegations in paragraph 28.

29. News' deceptive advertising and conduct were material, in that they were intended and likely to influence CPGs' decisions regarding purchase of FGI's advertising programs and retailers' decisions to permit FGI programs in their stores. News' tactics in fact did influence advertising decisions and damage FGI's advertising business.

ANSWER: Defendants deny the allegations in paragraph 29.

30. On information and belief, News' false advertising and conduct caused CPGs to stop doing business with FGI and caused other CPGs to delay contracting for advertising programs. News'

false advertising and promotions also influenced retailers to breach, cancel, or not renew retail licensing agreements with FGI and to enter into such agreements with News. News' conduct caused FGI to suffer injury, including but not limited to declining sales, lost profits, and loss of good will.

ANSWER: Defendants deny the allegations in paragraph 30.

31. As a result of News's prolonged campaign of unfair practices and tortuous [sic] misconduct, FGI has been greatly damaged in its business and reputation.

ANSWER: Defendants deny the allegations in paragraph 31.

COUNT 1

VIOLATION OF COMPUTER FRAUD & ABUSE ACT **(18 U.S.C. § 1030)**

32. FGI repeats and realleges all the preceding paragraphs of this Complaint as if fully set forth herein.

ANSWER: Defendants deny the allegations in paragraph 32.

33. FGI maintains secure, password-protected computer systems. The information stored on FGI's computers and system is proprietary, confidential, non-public, and trade secret information of FGI.

ANSWER: Defendants incorporate herein by reference their answers to paragraphs 1 through 32 as if fully set forth herein.

34. FGI's computers and the information stored on those computers are used in interstate or foreign commerce or communication and are protected within the meaning of this statute.

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34, and therefore deny those allegations.

35. News accessed FGI's business data stored on a computer used in interstate commerce or communication and therefore "protected" under 28 U.S.C. §1030(e)(2)(B).

ANSWER: Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35, and therefore deny those allegations.

36. News intentionally accessed FGI's computer system without authorization, and thereby obtained valuable information from FGI's protected computers. News' conduct involved interstate communication, in violation of 28 U.S.C. §1030(a)(2).

ANSWER: Defendants deny the allegations in paragraph 36.

37. FGI maintained a substantial measure of secrecy with respect to the information improperly accessed by News. Without illegal entry into FGI's computers, News would not otherwise have obtained FGI's confidential, proprietary, and trade secret information. News knew that FGI protected this information, but nonetheless knowingly took FGI's valuable information with the intent of defrauding FGI and gaining an unfair competitive advantage over FGI.

ANSWER: Defendants deny the allegations in paragraph 37.

38. News intentionally accessed FGI's protected computer without authorization, and as a result of News' conduct, caused damage to FGI, in violation of 28 U.S.C. § 1030(a)(5).

ANSWER: Defendants deny the allegations in paragraph 38.

39. News' conduct caused FGI economic damage or loss in an amount to be proved at trial, an amount that in any event aggregated at least \$5,000 in value during any 1-year period.

ANSWER: Defendants deny the allegations in paragraph 39.

COUNT 2

VIOLATION OF NEW JERSEY COMPUTER-RELATED OFFENSES ACT **(N.J.STAT. § 2A:38a-1 et seq.)**

40. FGI repeats and realleges all the preceding paragraphs of this Complaint as if fully set forth herein.

ANSWER: Defendants deny the allegations in paragraph 40.

41. News accessed FGI's computers knowingly, purposefully and without authorization on a number of occasions.

ANSWER: Defendants incorporate herein by reference their answers to paragraphs 1 through 40 as if fully set forth at length.

42. As a result of these actions, News accessed, viewed, and took data and information of FGI's.

ANSWER: Defendants deny the allegations in paragraph 42.

43. As a result of News's acts, FGI has been damaged in its business or property in an amount to be proved at trial.

ANSWER: Defendants deny the allegations in paragraph 43.

44. Defendants' acts described herein constitute a violation of the New Jersey statute regarding actions for computer-related offenses, which is codified at New Jersey Statute §2A:38A-1 through §2A:38A-6.

ANSWER: Defendants deny the allegations in paragraph 44.

45. News is responsible to FGI for compensatory damages, punitive damages, costs of suit, reasonable attorney's fees, and costs of investigation and litigation.

ANSWER: Defendants deny the allegations in paragraph 45.

COUNT 3

VIOLATION OF THE LANHAM ACT **(15 U.S.C. § 1125(a))**

46. FGI repeats and realleges all the preceding paragraphs of this Complaint as if fully set forth herein.

ANSWER: Defendants deny the allegations in paragraph 46.

47. News made false and misleading statements concerning News' and FGI's products and services.

ANSWER: Defendants incorporate herein by reference their answers to paragraphs 1 through 46 as if fully set forth at length.

48. News' false and misleading statements actually deceived or had a tendency to deceive a substantial portion of the intended audience.

ANSWER: Defendants deny the allegations in paragraph 48.

49. The deception was material in that it was likely to influence purchasing decisions.

ANSWER: Defendants deny the allegations in paragraph 49.

50. News' goods and services and FGI's goods and services traveled in interstate commerce.

ANSWER: Defendants deny the allegations in paragraph 50.

51. FGI was injured, and was likely to be injured, in terms of declining sales, lost profits, loss of goodwill, and other injuries.

ANSWER: Defendants admit the allegations in paragraph 51.

52. News's acts constitute a violation of the Lanham Act and entitle FGI to recover News' profits, FGI's damages, and the costs of this action. Because of the circumstances of the case and News' conduct, FGI is also entitled to recover an amount in excess of News' profits and/or three times FGI's damages, and reasonable attorney's fees.

ANSWER: Defendants deny the allegations in paragraph 52.

53. News's acts constitutes a violation of the Lanham Act and entitle FGI to recover News' profits, FGI's damages, and the costs of this action. Because of the circumstances of the case and News' conduct, FGI is also entitled to recover an amount in excess of News' profits and/or three times FGI's damages, and reasonable attorneys' fees.

ANSWER: Defendants deny the allegations in paragraph 53.

COUNT 4

TORTUOUS [sic] INTERFERENCE WITH EXISTING KMART CONTRACT

54. - 69.

RESPONSE: Defendants have moved to dismiss Count 4 of the Complaint, and therefore no answer to this Count is required.

COUNT 5

TORTUOUS [sic] INTERFERENCE WITH KMART BUSINESS RELATIONSHIP/PROSPECTIVE CONTRACTUAL RELATIONS

70. - 75.

RESPONSE: Defendants have moved to dismiss Count 5 of the Complaint, and therefore no answer to this Count is required.

COUNT 6

**TORTUOUS [sic] INTERFERENCE WITH WINN-DIXIE BUSINESS
RELATIONSHIP/PROSPECTIVE CONTRACTUAL RELATIONS**

76. – 87.

RESPONSE: Defendants have moved to dismiss Count 6 of the Complaint, and therefore no answer to this Count is required.

COUNT 7

TORTUOUS [sic] INTERFERENCE WITH FGI'S CONTRACTS WITH RETAILERS

88. – 92.

RESPONSE: Defendants have moved to dismiss Count 7 of the Complaint, and therefore no answer to this Count is required.

COUNT 8

**TORTUOUS [sic] INTERFERENCE WITH BUSINESS
RELATIONSHIP/PROSPECTIVE CONTRACTUAL
RELATIONS WITH RETAILERS**

93. – 100.

RESPONSE: Defendants have moved to dismiss Count 8 of the Complaint, and therefore no answer to this Count is required.

COUNT 9

**TORTUOUS [sic] INTERFERENCE WITH BUSINESS
RELATIONSHIP/PROSPECTIVE CONTRACTUAL RELATIONS WITH CPGs**

100. – 110.

RESPONSE: Defendants have moved to dismiss Count 9 of the Complaint, and therefore no answer to this Count is required.

COUNT 10

TRADE LIBEL AND BUSINESS DISPARAGEMENT

111. – 114.

RESPONSE: Defendants have moved to dismiss Count 10 of the Complaint, and therefore no answer to this Count is required.

COUNT 11

UNFAIR COMPETITION

115. FGI repeats and realleges all the preceding paragraphs of this Complaint as if fully set forth herein.

ANSWER: Defendants incorporate herein by reference their answers to paragraphs 1 through 114 as if fully set forth at length.

116. News's acts described herein constitute unfair competition under the common law.

ANSWER: Defendants deny the allegations in paragraph 116.

117. News's acts have caused FGI to suffer injury, including declining sales, lost profits, and loss of good will, and all injuries heretofore set forth.

ANSWER: Defendants deny the allegations in paragraph 117.

COUNT 12

MISAPPROPRIATION OF TRADE SECRETS

118. – 124.

RESPONSE: Defendants have moved to dismiss Count 12 of the Complaint, and therefore no answer to this Count is required.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a claim upon which relief can properly be granted against Defendants.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

REQUEST FOR RELIEF

WHEREFORE, Defendants request that the Court dismiss the complaint and award Defendants the cost of suit, attorneys' fees and such other relief as is allowed by law.

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DATED: March 6, 2006

**Defendants NEWS AMERICA MARKETING
IN-STORE SERVICES, LLC and NEWS
AMERICA MARKETING IN-STORE, LLC**

**HERBERT, VAN NESS, CAYCI &
GOODELL, P.C.**

By: /s/ Steven P. Goodell
Steven P. Goodell

MAYER, BROWN, ROWE & MAW, LLP

By: /s/ Lee N. Abrams
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