

ESTTA Tracking number: **ESTTA400956**

Filing date: **03/31/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Chinese Daily News, Inc.		
Entity	Corporation	Citizenship	CA
Address	1588 Corporate Center Dr. Monterey Park, CA 91754 UNITED STATES		

Correspondence information	Maxwell E. Lin Attorney at Law Law Offices of Maxwell E. Lin & Associates 2707 East Valley Blvd., Suite 308 West Covina, CA 91792 UNITED STATES maxesq88@aol.com Phone:626-839-8797
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Applicant Information

Application No	85116513	Publication date	03/22/2011
Opposition Filing Date	03/31/2011	Opposition Period Ends	04/21/2011
Applicant	Sho Tay 733 W. Naomi Ave., #N325 Arcadia, CA 91007 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2001/04/23 First Use In Commerce: 2001/04/23 All goods and services in the class are opposed, namely: On-line publication of newspapers and current events newsletters; Providing an Internet news portal featuring links to news stories and articles in the field of current events
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Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Opposer Chinese Daily News, Inc. contends that it has been using the trademark or trade name "Chinese Daily News" since the date it incorporated on 1981/12/31 and that Applicant's alleged first use date on 2001/04/23 is false and misleading. Applicant's acts constitute dilution and false designation of origin which is likely to cause of confusion, or to cause of mistake, or to

	deceive as to affiliation, connection or association of Applicant to Opposer, or as to the origin, sponsorship, or approval of Applicant's publication by Opposer. For details, see attached Complaint USDC Case No. CV1010079PA which is incorporated fully herein by reference.
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Related Proceedings	A complaint USDC Case No. CV1010079 PA against individuals including the applicant Sho Tay related to the purported trademark application is pending.
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Attachments	Complaint.pdf (14 pages)(4151431 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/
Name	Maxwell E. Lin
Date	03/31/2011

FILED

10 DEC 30 PM 1:15

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

1 **LAW OFFICES OF**
 2 **MAXWELL E. LIN & ASSOCIATES**
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 10 Attorney for Plaintiff Chinese Daily News, Inc.

7 **UNITED STATES DISTRICT COURT**
 8 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
 9 **CENTRAL DIVISION**

CV10 10079 PA (JEMK)
 CASE NO. _____

10 CHINESE DAILY NEWS, INC., a)
 11 California corporation,)
 12)
 13 Plaintiff,)
 14 vs.)
 15)
 16 SHOLIN TAY, an individual; SHO)
 17 TAY, an individual; JING YANG, an)
 18 individual; and DOES 1 to 10, inclusive,)
 19 Defendants.)

- COMPLAINT FOR:**
1. False Designation of Origin under 15 U.S.C. 1125(a)
 2. Trademark Dilution under 15 U.S.C. 1125 (c)
 3. Common Law Trademark Infringement
 4. Unfair Competition under Cal. Bus. & Prof. Code §§17200 et seq. and common law
 5. Wrongful Trade Name Use and Injury to Business Reputation under Cal. Bus. & Prof. Code §§14415 et seq
 6. Injury to Business Reputation and Trademark Dilution under Cal. Bus. & Prof. Code §§17500 et seq

20 **COMES NOW** Plaintiff CHINESE DAILY NEWS, INC., a California Corporation, and
 21 hereby, through its attorneys, files this complaint against defendant SHOLIN TAY, SHO TAY,
 22 JING YANG and DOES 1 to 10, inclusive, and complains and alleges as follows:

23 **PARTIES**

24 1. Plaintiff CHINESE DAILY NEWS, INC. ("Plaintiff") is, and at all times mentioned
 25 herein was, a California corporation, organized and existing under and by virtue of the laws of the
 26 State of California, and doing business in the County of Los Angeles.
 27

1 2. Plaintiff is informed and believes, and based upon such information and belief
2 alleges that SHOLIN TAY, is and at all times mentioned herein was, an individual residing and
3 doing business in the County of Los Angeles, State of California.

4 3. Plaintiff is informed and believes, and based upon such information and belief
5 alleges that SHO TAY is and at all times mentioned herein was, an individual residing and doing
6 business in the County of Los Angeles, State of California.

7 4. Plaintiff is informed and believes, and based upon such information and belief
8 alleges that JING YANG is and at all times mentioned herein was, an individual residing and doing
9 business in the County of Los Angeles, State of California.

10 5. The damages upon which this action is based occurred or arose out of activities
11 engaged in by the defendants, and each of them, in the County of Los Angeles, State of California.

12 6. The true names and capacities of defendants sued herein as DOES 1 to 10, inclusive,
13 are unknown to Plaintiff, who therefore sues these defendants by said fictitious names. Plaintiff is
14 informed and believes and alleges thereon that each of the fictitious defendants participated in the
15 acts complained of herein or is in some manner responsible for the occurrences herein alleged, and
16 that Plaintiff's damages as herein alleged were directly and proximately caused by the acts of each
17 defendant. When the true names and capacities of said fictitious defendants are ascertained,
18 Plaintiff will seek leave of Court to amend this complaint accordingly.

19 7. Plaintiff is informed and believes and upon such information and belief alleges that
20 each of said fictitiously named defendants is negligently or intentionally responsible in some
21 manner for the occurrences herein alleged and that Plaintiff's damages as herein alleged were
22 legally caused by said negligence or intentional acts.

23 8. At all relevant times, defendants, and each of them, were employees, agents,
24 servants, principals, managers, or owners of the others, and operated as alleged herein with the
25 express or implied authorization of each other. All acts of each of the defendants were ratified and
26 approved of by the other defendants.

27 9. Further, each and every defendant as aforesaid, when acting as a principal, was
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1 negligent in the selection, hiring, and supervision of each and every other defendant agent, servant,
2 employee, assistant and/or consultant.

3 10. Defendants and DOES 1 through 10, inclusive, jointly interacted and unlawfully
4 conspired with each other as agents, ostensible agents, employees, servants or representatives of
5 each other in their treatment and representations of/to Plaintiff and acted with actual or imputed
6 knowledge of all facts alleged herein at all times mentioned herein.

7 11. Plaintiff is informed and believes and upon such information and belief alleges
8 that at all times herein mentioned, defendants, and each of them, were the ostensible agents, actual
9 agents, employees, representative, partners, joint venturers, alter ego, and/or consultants of the co-
10 defendants and were, as such, acting within the course, scope, purpose and authority of said agency,
11 service, representative, partnership, alter ego, joint venture and/or employment.

12 12. Whenever appearing in this complaint, each and every reference to "defendant(s)"
13 intended to be, and shall be deemed, a reference to all defendants in this action, and each of them,
14 named and unnamed, including all fictitiously named defendants.

15 JURISDICTION AND VENUE

16 13. This is a civil action for misdescription of origin, trademark dilution, trademark
17 infringement and unfair competition arising under the Trademark Act of 1946, as amended, 15
18 U.S.C. sections 1125(a), 1125(c) and the common law; and for unfair competition, trademark
19 dilution, injury to business reputation and trade name infringement under California Business and
20 Professions Code sections 14415 et seq, 17200 et seq and 17500 et seq.

21 14. The Court has jurisdiction pursuant to 28 USC sections 1331 and 1338, and the
22 principles of supplemental jurisdiction.

23 15. Venue is proper in this Court pursuant to 28 U.S.C. sections 1391 (b) and (c).

24 BACKGROUND FACTS

25 16. Plaintiff CHINESE DAILY NEWS, INC. (hereinafter "CDN") doing business as
26 and commonly known as Chinese Daily News, is in the business of publishing and selling a
27 large-circulation Chinese language daily newspaper both in printed format and over the internet.
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1 Since its business was founded in 1981, CDN has marketed, sold, circulated and distributed said
2 newspapers nationwide in the Chinese community, particularly in California (mainly Los
3 Angeles and San Francisco), Arizona, and Nevada (primarily Las Vegas).

4 17. CDN has adopted the mark "Chinese Daily News" (the "Mark") and displayed
5 the Mark on its products and in connection with its news gathering and reporting services
6 continuously since on or about the time CDN was established in 1981. The Mark has acquired
7 secondary meaning through CDN's long, extensive and continuous use, and has not been licensed
8 by CDN to any Defendants herein.

9 18. CDN further uses in its publications a logo/mark consisting of "WJ" in a circle
10 symbolizing a globe (the "Logo") followed by Chinese characters "Shi Jay Sin Wen Wan"
11 phonetically (the "Chinese Mark") which translate as "World Journal News Web" and its
12 domain name www.worldjournal.com.

13 19. CDN has expended great efforts and substantial sums of money in making the
14 Mark, the Logo, the Chinese Mark, and its trade name "Chinese Daily News" well-known to its
15 readers, wholesalers and the public. In doing so, CDN has established a reputation for quality and
16 trustworthy news in connection with its products and services bearing and/or sold under and/or in
17 conjunction with the "Chinese Daily News", the Logo and the Chinese Mark, collectively
18 hereinafter referred to as the "Marks".

19 20. Products marketed, sold, circulated and/or distributed under and/or in conjunction
20 with the Marks have achieved widespread popularity in the Chinese nationwide marketplace.

21 21. The Mark is uniquely associated with CDN's business and has been indicative
22 of CDN's products and services in the mind of the purchasing public since long prior to
23 Defendants' conduct complained of herein.

24 22. As a result of the high quality of products sold and services offered by CDN under
25 and/or in connection with the Marks, and as the result of extensive advertising, sale and public
26 acceptance of those products, and services, the public has come to view the "Chinese Daily News"
27 mark and Chinese characters "Shi Ja Sin Wen Wan" mark as identifying CDN's products and
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1 services exclusively. The said Marks symbolize the goodwill created by CDN's sale and
2 distribution of high-quality products and services, and that goodwill has accrued to CDN's
3 exclusive benefit.

4 23. CDN retains the sole and exclusive right in the United States to use and/or
5 control the use of the said Marks in connection with its publications, in order to prevent the
6 infringement, disparagement, dilution and/or other misappropriation of the said Marks, along with
7 the right to bring and maintain actions thereon.

8 **DEFENDANTS' UNLAWFUL ACTIVITIES**

9 24. CDN is informed and believes, and on such information and belief alleges that
10 notwithstanding CDN's rights in and to the "Chinese Daily News" mark, and the Chinese characters
11 "Shi Ja Sin Wen Wan" mark, Defendants SHOLIN TAY, SHO TAY, JING YANG and DOES 1
12 to 10, with actual knowledge of CDN's rights therein, engaged in the publication, sale, circulation,
13 distribution and/or advertising of news publications bearing "Chinese Daily News" as a domain
14 name and trademark, and the Chinese characters "Shi Ja Sin Wen Wan" mark in intrastate and
15 interstate commerce.

16 25. CDN is informed and believes, and on such information and belief alleges that
17 notwithstanding CDN's rights in and to the said Marks, and CDN's website worldjournal.com,
18 Defendants SHOLIN TAY, SHO TAY and/ or JING YANG and DOES 1 to 10 with actual
19 knowledge of CDN's rights therein, have engaged in the publication, sale, circulation, distribution
20 and/or advertising of news publications in interstate and intrastate commerce bearing a logo/mark
21 with "WN" in a circle resembling a globe followed by Chinese characters which roughly translate
22 as "America World Journal News Web", below which mark, in English, is
23 "ChineseDailyNews.Com".

24 26. CDN is informed and believes, and on such information and belief alleges, that said
25 Defendants publish the electronic newspaper at a domain address of www.ChineseDailyNews.Com,
26 and have applied for registration of ChineseDailyNews.Com as trademark in the U.S. Patent and
27 Trademark Office.

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2 published, marketed and distributed the newspaper as early as 1981. Substantial quantities of
3 CDN's publications have been sold in interstate commerce in the United States.

4 32. CDN is the author, owner and/or the assignee of these news/articles including
5 pictures published in its newspapers and its electronic papers.

6 33. CDN has been and still is the sole proprietor of all rights, title, and interest in
7 and to the copyrights in the above entitled work. CDN's copyrights are in full force and effect.

8 DEFENDANTS' INFRINGING ACTIVITIES

9 34. CDN is informed and believes, and thereon alleges that after CDN's creation and
10 distribution of the electronic papers, newspapers, articles and pictures in the United States,
11 Defendants copied, distributed and offered for sale and sold Chinese language news papers and e-
12 papers, all of which are identical or substantially similar to CDN's works, under confusingly similar
13 trademarks.

14 35. CDN is informed and believes, and thereon alleges that Defendants have infringed
15 and threaten to further infringe CDN's works, trademarks and trade names by advertising,
16 distributing, selling and/or offering for sale infringing products in the United States.

17 36. Defendants are copying, distributing, offering for sale, and selling the infringing
18 products to numerous buyers throughout the United States, including buyers/readers located with
19 the state of California. Defendants have obtained revenue from the sales of said infringing products
20 to buyers/readers in the state of California and elsewhere.

21 37. CDN has notified Defendants that they have infringed the copyrights of CDN,
22 and the Marks, and Defendants have continued to infringe CDN's copyrighted works and the
23 Marks and sell and distribute copies of the same under trademarks, domain names and service
24 marks that infringe CDN's trademark and service mark or trade name rights and dilute the same.

25 38. The activities of Defendants complained of herein constitute willful and intentional
26 infringement of CDN's copyrights and trademark rights, are in total disregard of CDN's rights, and
27 were commenced and have continued in spite of Defendants' knowledge that the advertising,
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1 distributing, selling and/or offering for sale of infringing products was and is in direct contravention
2 of CDN's copyrights.

3 39. Defendants' activities have been without Plaintiff CDN's consent, are likely to
4 cause confusion and mistake in the minds of the purchasing public, in particular by falsely creating
5 the impression that the products and services sold by Defendants emanate from CDN and/or are
6 authorized, sponsored, or approved by CDN when in fact they are not.

7 40. Defendants have infringed CDN's Marks alleged herein with the intent to deceive
8 the public into believing that products sold by Defendants are made by, approved by, sponsored by,
9 or affiliated with CDN. Defendants' acts as alleged herein were committed with the intent to pass
10 off and palm off Defendants' products as the products of CDN, and with the intent to deceive and
11 defraud the public.

12 41. CDN has been damaged by reason of the acts of Defendants, which damages include,
13 but are not limited to, lost sales and profits, the loss of valuable good will, and the unjust
14 enrichment of profits accruing to Defendants which would have accrued to CDN but for
15 Defendants's actions, all to CDN's damage in a sum not yet ascertained. CDN is entitled to punitive
16 and exemplary damages by reason of Defendants's fraud as herein alleged.

17 **FIRST CAUSE OF ACTION**
18 **FALSE DESIGNATION OF ORIGIN UNDER LANHAM ACT §43(A)**
19 [15 U.S.C § 1125 (a)]
20 (Against All Defendants and Does 1 to 10)

21 42. Plaintiff repeats and realleges the allegations in paragraphs 1 to 41 as though
22 fully set forth herein.

23 43. With knowledge of CDN's rights in the "Chinese Daily News" mark, the Logo
24 and the Chinese characters "Shi Ja Sin Wen Wan" mark complained of, Defendants continue to
25 use that mark in order to capitalize on the good name, reputation and goodwill of CDN.

26 44. Defendants' acts as alleged above constitute a false designation of origin which is
27 likely to cause confusion, or to cause mistake, or to deceive as to affiliation, connection or
28 association of defendants with CDN, or as to the origin, sponsorship, or approval of defendants'
publication by CDN, in violation of the Lanham Act, 15 U.S.C. section 1125(a)(1)(A).

1 45. Defendants' conduct has caused, and if not enjoined, will continue to cause,
2 irreparable damage to CDN's trademark rights, good name, reputation and goodwill in a manner
3 that cannot be calculated or compensated in money damages. CDN has no adequate remedy at law.

4 46. As a result of the foregoing, CDN has been injured, and Defendants have received
5 illicit profits and wrongful gains.

6 **SECOND CAUSE OF ACTION**
7 **TRADEMARK DILUTION UNDER LANHAM ACT § 43(A)**
8 [15 U.S.C. § 1125(c)]
(Against All Defendants and Does 1 to 10)

9 47. Plaintiff realleges and repeats the allegations in paragraphs 1 to 46 as though
10 fully set forth herein.

11 48. With full knowledge of CDN's rights in the "Chinese Daily News" mark, the Logo
12 and Chinese characters "Shi Ja Sin Wen Wan" trademark and service mark, Defendants and DOES
13 1 to 10 continue to make unlawful use of said Marks.

14 49. Defendants' acts constitute dilution and unfair competition in violation of the
15 Lanham Act, 15 U.S.C. §1125(c).

16 50. Defendants' conduct has caused, and if not enjoined, will continue to cause,
17 irreparable damage to CDN's rights in the marks, good name, reputation and goodwill in a manner
18 that cannot be calculated or compensated in money damages. CDN has no adequate remedy at law.

19 51. As a result of the foregoing, CDN has been injured, and Defendants have received
20 illicit profits and wrongful gains.

21 **THIRD CAUSE OF ACTION**
22 **COMMON LAW TRADEMARK INFRINGEMENT**
(Against All Defendants and Does 1 to 10)

23 52. Plaintiff repeats and realleges the allegations in paragraphs 1 to 51 as though fully
24 set forth herein.

25 53. The aforesaid acts of Defendants constitute infringement of CDN's "Chinese Daily
26 News" mark, the Logo and Chinese characters "Shi Ja Sin Wen Wan" trademark and service mark,
27 which has been in continuous use by CDN long prior to Defendants' first use of the infringing
28 marks complained hereof.

1 54. Defendants' activities as set forth herein constitute use in commerce of the
2 infringing marks and copyrighted works under the infringing trademark.

3 55. Defendants use of CDN's copyrighted works without CDN's consent or
4 authorization, and Defendants' sale and distribution of the infringing works under the infringing
5 mark in interstate commerce, is likely to cause confusion and mistake in the minds of the public,
6 leading the public to believe that their products emanate or originate from CDN, or that CDN has
7 authorized, sponsored, or approved or otherwise associated itself with Defendants, which is untrue.

8 56. Defendants' unauthorized use, sale, and distribution of infringing products as set
9 forth above has resulted in Defendants' unfairly benefitting from CDN's advertising and promotion,
10 and profiting from CDN's reputation and its copyright-protected content, to the substantial and
11 irreparable injury of the public, and/or CDN.

12 57. Defendants have violated CDN's rights under 17 U.S.C. §§101 et seq. by selling
13 these products as set forth above.

14 58. Defendants' aforesaid acts have caused, and will continue to cause, great and
15 irreparable injury to CDN, and unless such acts are restrained by this Court, they will be continued,
16 thereby causing CDN to continue to suffer great and irreparable injury. CDN has no adequate
17 remedy at law.

18 59. CDN is informed and believes and thereupon alleges that Defendants' infringement
19 as set forth above is both intentional and willful. CDN is entitled to punitive and exemplary
20 damages by reason of Defendants' conduct as herein alleged.

21 60. CDN has no adequate remedy at law and is suffering irreparable harm and damage
22 as a result of the aforesaid acts of Defendants in an amount thus far not determined.

23 61. By reason of Defendants' acts herein alleged, CDN has sustained and will continue
24 to sustain damages including, but not limited to, loss of sales and profits which CDN would have
25 made but for Defendants' acts.

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FOURTH CAUSE OF ACTION
UNFAIR COMPETITION

[Cal. Bus. & Pro. Code §§17200 et seq]

(Against All Defendants and Does 1 to 10)

62. CDN hereby realleges each and every allegation set forth in paragraphs 1 to 61 of this Complaint, and incorporates them herein by this reference.

63. By reason of the aforesaid acts, Defendants are guilty of unfair competition, false and fraudulent advertising and representations, dilution and infringement of CDN's common law rights in the Marks in violation of the California Business and Professions Code §§17200 et seq.

FIFTH CAUSE OF ACTION
WRONGFUL TRADE NAME USE AND INJURY TO BUSINESS REPUTATION

[Cal. Bus. & Pro. Code §§14415 et seq]
(Against All Defendants and Does 1 to 10)

64. CDN hereby realleges each and every allegation set forth in paragraphs 1 to 61 of this Complaint, and incorporates them herein by this reference

65. Owing to Defendants' conduct complained of herein, there is a likelihood of injury to CDN's business reputation and/or of dilution of the distinctive quality of the Marks and CDN's trade name which are valid at common law.

66. By reason of the aforesaid acts, Defendants are in violation of Cal. Bus. & Pro. Code §§14415 et seq.

SIXTH CAUSE OF ACTION
INJURY TO BUSINESS REPUTATION AND TRADEMARK DILUTION

[Cal. Bus. & Pro. Code §§17500 et seq]
(Against All Defendants and Does 1 to 10)

67. CDN hereby realleges each and every allegation set forth in paragraphs 1 to 61 of this Complaint, and incorporates them herein by this reference

68. Owing to Defendants' conduct complained of herein, there is a likelihood of injury to CDN's business reputation and/or of dilution of the distinctive quality of the said Marks and CDN's trade name which are valid at common law.

1 audio, video or theatrical work or in any form, in connection with the sale, manufacturing,
2 distribution, advertising or promotion of their publication as such publication does not emanate
3 from or originate with, and is not licensed by, CDN;

4 b. disseminating, using or distributing any publications with “Chinese Daily
5 News”, the Logo, and Chinese characters “Shi Ja Sin Wen Wan” trademark and service mark in
6 any form or any mark whose appearance so resembles “Chinese Daily News” mark and Chinese
7 characters “Shi Ja Sin Wen Wan” trademark and service mark so as to create a likelihood of
8 confusion, mistake or deception;

9 c. Using any false designation of origin or false description that can, or is
10 likely to, lead the trade or public, or individual members thereof, to believe that any publication
11 published, distributed or sold by defendants is in any manner associated or connected with CDN,
12 or is sold, published, licensed, sponsored or approved or authorized by CDN; and

13 d. from otherwise engaging in any other activity constituting an infringement
14 of CDN’s trademark, or otherwise unfairly competing with CDN.

15 2. That Defendants be required to deliver up to CDN for destruction all publications
16 bearing the “Chinese Daily News” mark, the Logo and Chinese characters “Shi Ja Sin Wen Wan”
17 trademark and service mark or any other colorable imitation thereof, and all documents or tangible
18 things that discuss, describe mention or relate to such publications.

19 3. That Defendants file with the court and serve on CDN’s counsel within 30 days
20 after entry of Judgment a report in writing under oath setting forth in detail the manner and form
21 in which defendants have complied with the requirements of the injunction and order.

22 **DAMAGES**

23 4. Defendants be required to account for and pay over to CDN all damages sustained
24 by CDN and any and all profits realized by defendants by reason of their unlawful acts alleged
25 herein and that such amounts be trebled, as provided by law.

26 5. Defendants be required to pay CDN all of its costs, disbursements and attorney’s
27 fees in this action.

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- 6. For actual damages according to proof.
- 7. Compensatory damages in an amount according to proof at trial.
- 8. Consequential damages in an amount according to proof at trial.
- 9. Punitive or exemplary damages.
- 10. That Plaintiff have such other and further relief as the court may deem appropriate to prevent the infringement, disparagement or tarnishing of CDN's "Chinese Daily News" mark, the Logo and Chinese characters "Shi Ja Sin Wen Wan" trademark and service mark and to prevent the unfair competition that defendants have engaged in from recurring.
- 11. For prejudgment interest.
- 12. That Plaintiff have such other and further relief as the court deems proper.

Dated: December 28, 2010

LAW OFFICES OF MAXWELL E. LIN

By: 
Maxwell E. Lin, Attorney for Plaintiff
Chinese Daily News, Inc.