

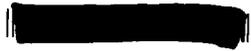
TTAB

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

NY-EXOTICS, INC.)
)
Petitioner,)
)
vs.)
)
EXOTICS.COM, INC.,)
)
Respondent/Registrant.)
)
_____)

Cancellation No. 92/040976
Registration No. 2,576,808
Mark: NY-EXOTICS.COM

**RESPONDENT'S
OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT
AND BRIEF IN SUPPORT
THEREOF; MOTION TO
EXTEND TIME UNDER
RULE 56(f); EXHIBIT LIST
AND EXHIBITS**



12-04-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #78

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I hereby certify that the foregoing **Respondent's Opposition to Motion for Summary Judgment and Brief in Support Thereof; Motion to Extend Time Under Rule 56(f); Exhibit List and Exhibits** is being deposited with the U.S. Postal Service as "Express Mail Post Office to Addressee" mail under 37 CFR 1.10, postage prepaid, in an envelope addressed to:

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By: Michael M. Krieger
Michael M. Krieger

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Respondent and Registrant Exotics.com, Inc. respectfully submits that summary judgment should be denied because there are numerous factual disputes regarding Petitioner's claim to ownership of the Mark belonging to Exotics.com, pre-eminent among which is the iniquitous fraud being perpetrated by Petitioner and its principal, Scott London on Respondent and this Board. Exotics.com owns the "exotics" trademarks for numerous cities (such as "NY-Exotics," "Las Vegas-Exotics," and many others). One of its licensees, Petitioner NY-Exotics, Inc., is trying to steal the Mark and associated corporate assets and rights, in order to avoid paying contractually mandated license fees. Petitioner's claim of ownership of the Mark is based solely on the contrived breach of an illegitimate "Amendment" to the License allegedly executed in 2001, which purported to give Petitioner, for no consideration whatsoever, the "reversionary" right to the Mark. This fraudulent claim, based on a sham document, is the subject of intense factual dispute, not only in this proceeding but also in related legal proceedings now pending in Los Angeles County Superior Court.

First, the 2001 Amendment is a sham and a fraud, because it was executed by Scott London, who was simultaneously an officer and director of Exotics.com and an officer, director and shareholder of NY-Exotics. London violated his fiduciary duties to Exotics.com, by purporting to hand over to his own company, NY-Exotics, the reversionary rights to the Mark owned by Exotics.com. The Board of Exotics.com never

approved or ratified London's miscreant acts or the purloining of corporate assets. The 2001 Amendment is therefore ultra vires, void, and unenforceable.

Second, even if the Amendment were valid, the documents proffered by Petitioner in support of the alleged breach consist of two letters by the very same counsel who signed the Petitioner's motion papers. These letters do not constitute summary judgment evidence. These two letters by counsel are bereft of any evidentiary value, and are just argument and opinion, which are vigorously disputed by Respondent. Therefore, there is no evidence of breach.

Third, in order to be successful on its summary judgment motion, Petitioner must disprove all of the affirmative defenses raised by Respondent Exotics.com. These defenses include fraud and unclean hands. Petitioner failed to disprove these defenses, and in fact failed to address them entirely in its motion. But even if it had addressed them, Petitioner could never overcome the numerous factual disputes raised by these defenses, particularly the issues surrounding the unclean hands of Scott London and his company, NY-Exotics. Therefore, the Board can and should deny summary judgment.

Finally, if for any reason the Board were inclined to give any credence whatsoever to the disputed factual contentions raised by Petitioner, then Respondent Exotics.com respectfully moves, pursuant to Rule 56(f), for a continuance and leave to conduct all the discovery necessary to examine the documents and testimony raised by Petitioner, including the deposition of Mr. London and Mr. Shapiro.

For these reasons, which are delineated more fully below, Respondent respectfully asks that summary judgment be denied.

II. FACTUAL BACKGROUND

A. Ownership Of The Mark By Exotics.com.

Exotics.com is the rightful holder of all interest in the Mark. Petitioner NY-Exotics had no role in the initial creation or licensing of the Mark, and never owned the Mark.

In brief, the “exotics’ business was formed in 1997 by Gary Thomas, Andrew Maltin, and Lea Hastings to license website format and URLs for upscale adult lifestyle advertisers. The initial company, Exotics USA, LLC, created and trademarked URLs consisting of a city name and the word “exotics.” NY-Exotics is one such example. The name and mark were then licensed to operators in the various cities who would provide local advertising content. (Thomas Decl ¶ 2, Exhibit G.)

In June 1999, Exotics USA was acquired by and its assets transferred to Exotics.com, Inc., a Delaware corporation. As seen in Exhibit A, in 1999 all stock and rights of Exotics USA were acquired by the new Delaware Corporation, Exotics.com, Inc. (Exotics-DE).

On March 8, 2001, as part of a reverse merger, Exotics.com (Delaware) became a wholly owned subsidiary of Exotics.com, Inc., a Nevada corporation (Thomas

Decl ¶ 2, Exhibit G.) Thus, the rights to the “NY-Exotics” Mark belongs to and are controlled by Exotics.com, and not by Petitioner.

B. NY-Exotics’ License Of The Mark And Acknowledgment Of The Rights And Ownership Of The Licensor.

As one of a number of licensees, NY-Exotics executed a License Agreement dated as of October 15, 1997. (Petitioner’s Motion for Summary Judgment, Exhibit 3.) Significantly, Scott London executed this original License Agreement as President of NY-Exotics. In the License Agreement, Petitioner and Mr. London acknowledged that:

Licensor [Exotics USA, LLC] is the owner of all right, title and interest in and to the URL NY-Exotics.com.

(Petitioner’s Motion for Summary Judgment, Exhibit 3.)

On November 5, 1998, NY-Exotics Exotics – again represented by Scott London as its President – executed an Amendment Agreement, which specifically confirmed that all intellectual property rights relating to the URL belonged to the Licensor:

Licensee [NY-Exotics] acknowledges and agrees that all copyright, trademark and other intellectual property rights in the Website and all of its contents are owned and controlled wholly, exclusively, in perpetuity, in any and all media, and throughout the world by Licensor [Exotics USA, LLC].

(Petitioner’s Motion for Summary Judgment, Exhibit 4.)

C. Scott London's Attempt To Take Control Of Exotics.Com.

Not content with being president, director and shareholder of NY-Exotics, Scott London and his affiliated company, Red Rock, attempted to take over control of Exotics.com itself. By making various promises of large-scale financing – which never materialized – London inveigled his way into a seat on the Board of Directors, and in fact insisted that he become President of Exotics.com.

Thus, on June 25, 1999, Scott London was appointed as a Director of Exotics.com, Inc. (a Delaware Corporation). (See Exhibit. B). Significantly, London remained as an officer and director until January 8, 2002, when he resigned. (See Exhibit F.)

During this same period of time, London also continued to serve as a shareholder, director and president of NY-Exotics, creating an inexorable conflict of interest which was manifested in the fraudulent 2001 Amendment.

D. Execution Of The Alleged 2001 Amendment By Scott London While He Was Director And Acting CEO Of Exotics.com And Director, Shareholder And President Of NY-Exotics.

On March 5, 2001 – just days before the March 8 merger between Exotics (Delaware) and Exotics (Nevada) – Exotics USA and NY-Exotics allegedly executed the Amendment which is the core of the dispute in this case. (Petitioner's Motion for

Summary Judgment, Exhibit 4.) This bizarre document purported to grant the entire reversionary interest in all intellectual property rights back to NY-Exotics upon any unspecified breach by Licensor. Significantly, the document recites no new consideration whatsoever to Licensor in exchange for this extraordinary benefit to the Licensee, NY-Exotics.

Moreover, neither the Due Diligence Letter of March 8, 2001, which was prepared for the merger, nor its July supplement, mentioned any such recent Amendment. (Exhibit M.) If such an Amendment, which risked the loss of the NY-Exotics Mark and all affiliated rights, had then existed and had been disclosed to and approved by the Board, it certainly would have been reflected in the due diligence analysis upon which the merger was based. The fact that it was entirely unknown and unmentioned is silent confirmation that the Board never knew of or approved such a giveaway of corporate assets.

In fact, the highly unusual timing of the Amendment and the fact that it was concealed from the Board suggests either that London knew of the impending merger and was trying to gain an advantage before the Nevada Board took control of the company, or that he deliberately back-dated the Amendment so that it would appear to have been created just before the merger.

Simply put, the 2001 Amendment is the product of fraud and conflict of interest. Scott London used his position as President and Director of Exotics.com to cause it to enter into an Amendment which provided no benefit to itself, but purported to grant a windfall to his own company, NY-Exotics. In so doing, London conspired with Andrew Maltin, who allegedly received a handsome payment in exchange for signing on behalf of Exotics.com. (Exhibit K, ¶¶ 25-26.)

Significantly, Gary Thomas, a founder of Exotics USA, LLA and Exotics.com, and a Director of Exotics.com, had no knowledge whatsoever of this fraudulent 2001 Amendment. (Thomas Decl ¶ 7, Exhibit G.)

E. Pending Civil Proceedings In Los Angeles Superior Court.

Not surprisingly, based on Andrew Maltin's complicity in this fraud, a lawsuit was filed against Maltin and others by Exotics.com and by Gary Thomas, one of the original founders of Exotics USA and Exotics.com. These actions are presently pending in Los Angeles Superior Court. (Exhibits J and K.) The validity of the Amendment and other issues will be decided in those proceedings. It is the intention of the Plaintiffs in those actions to name Scott London and his affiliates, including NY-Exotics, as additional Defendants in these Superior Court actions.¹

¹Because of the complex and long-running series of fraudulent maneuvers by Maltin, London and others are the subject of such proceedings, Respondent believes the Board may wish to defer any decision about the contract issues until further rulings in the Superior Court actions.

III. ARGUMENT

A. Petitioner Cannot Meet The Standard For Summary Judgment.

Petitioner cannot meet the standard for summary judgment because there are numerous disputed factual issues, which Petitioner has not even addressed. As moving party, Petitioner has the burden of demonstrating the complete absence of any genuine issue of material fact:

A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to judgment as a matter of law.

...

In deciding a motion for summary judgment, the Board may not resolve an issue of fact; it may only determine whether a genuine issue of material fact exists.

...

The nonmoving party must be given the benefit of all reasonable doubt as to whether genuine issues of material facts exist; and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts, must be viewed in the light most favorable to the nonmoving party.

TBMP Section 528.01.

Specifically, it is well established that summary judgment may not be entered where the validity of an agreement is subject to factual dispute. See Brass Construction v. Muller, 2000 U.S. Dist. LEXIS 8535 (S.D.N.Y. 2000) (denial of summary judgment in trademark case because genuine factual issue remained regarding validity of agreement). For these reasons, summary judgement is disfavored in the trademark area, particularly where the central issues of ownership of the mark are disputed.

Because of the intensely factual nature of trademark disputes, summary judgment is generally disfavored in the trademark arena.

Interstellar Starship Serv. v. Epix, Inc., 184 F.3d 1107, 1109 (9th Cir. 1999) (emphasis added).

Furthermore, in order to prevail on summary judgment, the moving party has the burden to overcome each affirmative defense offered by defendant or opposing party. See Cromeens, Holloman, Sibert, Inc. v. AB Volvo, 2003 U.S. App. LEXIS 22859, * 52-53 (7th Cir. 2003) (“Whether it is an element of the claim or an affirmative defense, if the [moving party is] unable to demonstrate a genuine issue of material fact on that point, their claim cannot survive summary judgment”).

As set forth below, Petitioner has not even attempted to address and resolve the factual issues implicated by its motion and the affirmative defenses raised by Respondent, and cannot remotely meet the standard for summary judgment.

B. The 2001 Amendment Is Void And Unenforceable.

The 2001 Amendment (Petitioner Exh. 6), on which the Motion depends, is a legal nullity. It is product of fraud, conspiracy and breach of fiduciary duty by Scott London, the President of Exotics.com, and it violates the statutory rule that interested directors and officers cannot approve or ratify transfers of corporate property for their own benefit.

1. **The "Amendment" Is "Ultra Vires" And Void Because It Is The Product Of Fraud And Conflict Of Interest.**

Scott London, the signatory of the "Amendment" on behalf of Petitioner, was at the very same time a Board and Acting CEO of Respondent Exotics.com, having been appointed by the Board on June 25, 1999 and remaining in those positions through January 8, 2002 (Penultimate Sentence, Exhibit. B; Letter from Scott London, Exhibit F.) Since these dates bracket the March 5, 2001 alleged date of the "Amendment," his execution of the Amendment is blatant self-dealing in violation of London's fiduciary obligations to Exotics.com.

As a matter of law, as President of Exotics.com, London owed a fiduciary duty to that corporation. With the March "amendment" -- to the extent it might actually affect trademarks and other intellectual property -- he risked Exotics losing its most valuable asset without any consideration for so doing. As an interested director, London failed in his duty to disclose to and seek approval from the non-interested directors of Exotics. California law, which governs the enforcement of the License Agreement, clearly prohibits a director from benefitting himself at the expense of the corporation:

It is a cardinal principle of corporate law that a director cannot, at the expense of the corporation, make an unfair profit from his position. He is precluded from receiving any personal advantage without fullest disclosure to and consent of *all* those affected. The law zealously regards contracts between corporations with interlocking directorates, will carefully scrutinize all such transactions.

Remillard Brick Co. v. Remillard-Dandini Co., 109 Cal. App. 2d 405, 419, 241 P.2d 66 (1952) (emphasis added).

In fact, 2001 Amendment violates California Corporations Section 5234(a), which exempts from being void or voidable only those transactions which are fully disclosed to and approved by the Board.

No contract or other transaction between a corporation and any domestic or foreign corporation, firm or association of which one or more of its directors are directors is either void or voidable because such director or directors are present at the meeting of the board or a committee thereof which authorizes, approves or ratifies the contract or transaction, **if:**

(1) The material facts as to the transaction and as to such director's other directorship **are fully disclosed or known to the board or committee, and the board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the common director or directors;** or

(2) As to contracts or transactions not approved as provided in paragraph (1) of this subdivision, the contract or transaction is just and reasonable as to the corporation at the time it is authorized, approved or ratified. (b) This section does not apply to transactions covered by Section 5233.

California Corporations Code § 5234(a) (emphasis added).²

Here, London was an interested director, making the "Amendment" void or voidable by the Corporation absent compliance with the statute, i.e., full disclosure and approval. There was no disclosure to -- much less approval by -- the Board of Directors of Exotics.com. (Thomas Decl. ¶ 7, Exhibit G.) In fact, Mr. Thomas, a Director of Exotics.com, has stated unequivocally under oath that he never knew of or approved any such Amendment.

The Corporate Minutes of Exotics, Inc. (whether USA, Delaware or Nevada) show no record of authorizing the execution of an "Amendment" by either Maltin or London (Thomas Decl. ¶ 7, Exhibit G.) Since the New York assets (domain name, trademark, etc.), were among the most valuable to Exotics - potentially 30-50% of its revenues-- (Duggan Decl. ¶3, Exhibit. H), a Board resolution would be required to put such assets at risk.

Accordingly it is a reasonable inference, and Respondent believes, that

² Delaware likewise provides in Code Section 144 that: "(a) No contract or transaction between a corporation and 1 or more of its directors or officers, or between a corporation and any other corporation, partnership, association, or other organization in which 1 or more of its directors or officers, are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, . . . **if: (1) The material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum**" or (2) the material facts are disclosed or are known to the shareholders and approved in good faith by vote of the shareholders; or (3) the "contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the board of directors, a committee or the shareholders."

Maltin and London conspired to create the 2001 Amendment in a last-ditch attempt to gain rights held by Exotics.com, which was being strengthened by St. George Capital's investment and management.³ Therefore, the Amendment is void, or, at the very least, voidable at the option of Exotics.com.

2. The 2001 Amendment Is Unenforceable For Lack Of Consideration.

There is no legal consideration for Exotics.com to have given up its rights in the Mark. As a putative Amendment to the Agreement, the 2001 document imposes on Exotics.com critical new burdens, among them certain provisions for automatic transfer of intellectual property to NY-Exotics on termination for uncured breach by Exotics.com. In particular, Exhibit 6 purports to add the following:

In the event of breach by Licensor, Licensor agrees to transfer the URL's to the name of the Licensee. Licensor will act in a reasonable

³ The 2001-Documents raises doubts of authenticity on its face. In addition to Respondent's evidence that the 2001-document was never authorized or known to the Exotics Directors (Declarations of Gary Thomas and Barry Duggan (Exhibits. G and H respectively), the evidence *per se* and Petitioner's evidence shows reason to doubt the genuineness of the document. In particular: (1) the 2001-Documents recites "Exotics USA" as a party, although all rights had been transferred to Exotics.com-DE more than 18 months earlier.

(2) Despite the alleged two transfer provisions being from the same document, Shapiro's December 6, 2001 letter of "termination" (Petitioner's Motion for Summary Judgment, Exhibit 8), counsel refers to transfer of the URL "pursuant to the Amendment," but references the transfer of copyrights, trademarks etc. "as more fully set forth in the Agreement."

(3) Equally telling as the inconsistent references is the absence of customary, lawyer-like specific citations to "chapter and verse" e.g., "Pursuant to Section 28, paragraph g, ..." This absence suggests strongly that Mr. Shapiro had no access to the Amendment, the 2001-Documents, when he wrote but, perhaps, relied on verbal representations by Mr. London.

(4) The choice of date - March 5, 2001 barely antedates the March 8, 2001 date where Exotics.com-DE merged into Exotics.com-NY (Thomas Decl. ¶ 2, Exhibit G).

(5) Using the term "reverts" instead of assignment language raises questions of whether it was actually drafted in the normal course by counsel.

fashion to expedite this transfer so the Website will not incur any downtime.

(Petitioner's Motion for Summary Judgment, Exhibit 7, §16 (last sentence).)

Similarly, the document purports to cause the Mark to "revert" to Licensee.

Upon the termination due to breach of this Agreement by Licensor, as described in Paragraph 16, all of the trademark, copyrights, URL's, and other intellectual property rights licensed by Licensor to Licensee under this Agreement shall revert wholly and automatically to Licensee, and Licensor shall make no further use of such rights for any purpose whatsoever.

(Petitioner's Motion for Summary Judgment, Exhibit 7, § 28(g) (last sentence).)

Similarly, the document purports to create certain other immediate benefits to NY-Exotics (e.g., relief from escrow obligations in the existing Agreement). These and some benefits to Licensee are all that is left after stripping away the cloud cover of provisions which repeat what already existed in the underlying Agreement.

The 2001 Amendment recites no consideration to Exotics.com in exchange for the enormous risk and downside it assumed, namely the transfer of its most important assets including the trademark to NY-Exotics should Exotics.com breach any aspect of the License Agreement.

Therefore, under California law, the 2001 Amendment is unenforceable as to the pre-existing License Agreement. See Motown Record Corp. v. Brockert, 160 Cal. App. 3d 123, 133 (1984) ("[A]n executory written modification must meet the requirements of a valid contract . . . Specifically, the court has held the modification must be supported by new consideration."); Harvey v. DeGarmo, 129 Cal. App. 487, 492-93

(1933) ("An executory contract may .. be altered or modified . . . [b]ut the variation of a contract . . . requires a consideration."); Main St. A. P. R. Co. v. Los Angeles Traction Co., 129 Cal. 301, 305 (1900) ("[T]he variation of a contract is as much a matter of contract as the original agreement . . . And a contract for such variation . . . requires a consideration.").

3. The Language of "Reversion" Is Legally Meaningless.

Even if the document were generally enforceable, the specific language of "reversion" is legally meaningless. Paragraph 28(g) of the 2001 Amendment says that on termination the IP "reverts" to Licensee. That inherently assumes the Licensee initially held rights in the Mark. But by its own admission throughout the moving papers Petitioner was a Licensee so its use of the Mark inured to Respondent Licensor and it therefore had no rights upon which a reversion can be based. In the absence of the proper assignment language, this provision is by definition a nullity.

4. Exotics USA, LLC Had No Right To Transfer The Trademark In Any Event.

Finally, it is legally significant that Exotics USA, LLC had no right to transfer the Mark as of March 5, 2001, the date of the 2001 Amendment, because all rights and control of Exotics USA, LLC had long since been transferred to Exotics.com-DE. (Exhibit A, pg. 3; Thomas Decl. ¶ 7, Exhibit G.) Thus Petitioner's claim of trademark rights under the 2001 Agreement is simply vacuous: since June 1999, the

putative transferor, Exotics USA, had owned no intellectual property or other assets to transfer, when Exotics.com-DE acquired them as part of its formation, at the behest of Petitioner's own President, Scott London, and his investment group. (Thomas Decl. ¶ 3, Exhibit G.)

C. There Is No Competent Evidence Of Any Breach Of The 2001

Amendment.

Even assuming arguendo – and bearing in mind that on summary judgment, all inferences are in favor of the non-moving party – that the 2001 Agreement had any validity, it still was not breached by Exotics.com, and there is no competent evidence of any alleged breach. Therefore NY-Exotics acquired no rights to the Mark.

Petitioner offers no competent evidence whatsoever to support its claim of breach. The sole “evidence” of Exotics.com's alleged “uncured breach” consists of two “lawyers letters” (Petitioner’s Motion for Summary Judgment, Exhibits 7 and 8) sent by Petitioner’s counsel Mitchell S. Shapiro – the same lawyer who filed the pending motion. No evidence is offered that Mr. Shapiro had first hand knowledge of such events, of whether or not they were cured, or of whether the Parties in fact terminated the License Agreement.

Moreover, even the breaches alleged in Shapiro’s October 9, 2001 letter all raise factual disputes. For example, Shapiro’s assertions as to whether Exotics engaged

in “illegal conduct”; whether Exotics failed to provide services; whether Exotics sold unapproved advertising; and whether Exotics encroached into New York’s territory – all raise factual issues.

Moreover, Respondent Exotics.com vigorously disputes each and every factual contention of breach. (Duggan Decl. ¶ 4, Exhibit H)

Resolution of these disputed factual contentions would manifestly require factual determinations beyond the face of the letters and documents presently before the Board. Generally, summary judgment is improper where the issue is which of several documents or agreements express the contract terms. See Minnesota Mut. Life Ins. Co. v. Ensley, 174 F.3d 977 (9th Cir. 1999).⁴

Such “evidence” compels denial of the motion. The trademark transfer claimed by Petitioner requires an antecedent breach and termination of the License. Sincere there is no evidence of breach, and since the issue of breach is a disputed issue of fact, the central argument of the motion fails.

⁴Petitioner cites to Vaughn Russell Candy Co. v. Cookies in Bloom, Inc., 47 U.S.P.Q.2d 1635 (TTAB 1998) for the proposition that this Board is entitled to enforce agreements to cease use of a mark. In that case however, the applicant was specifically precluded from use of the mark by a settlement agreement where the applicant specifically agreed to discontinue use. This case is distinguishable in that the agreement to cease use was not in dispute. Rather, it is whether the material breach itself, the condition precedent to the transfer of the mark, has been satisfied.

D. Petitioner Entirely Failed To Address, Let Alone Disprove, The Affirmative Defenses Asserted By Respondent Exotics.com.

Petitioner failed to address and overcome the affirmative defenses raised in Respondent's Answer. In particular, Petitioner has not addressed the Third Affirmative Defense, Unclean Hands, which arises because Scott London breached his fiduciary duties and engaged in double-dealing while President and Director of Exotics.com.

Similarly, Petitioner failed to address Fourth Affirmative Defense, Estoppel, which arises because of Petitioner's obligations as a Licensee to not challenge Respondent/Licensors rights in the Mark, not only by this Cancellation Action but by its filing of a trademark application (Petitioner's Motion for Summary Judgment, Exhibit 2) while still a Licensee by its own admission.

Likewise, the Fifth Affirmative Defense, Acquiescence, applies because Petitioner's president Scott London was a director of Respondent for almost two years after the filing of the application in February 2000 (Petitioner's Motion for Summary Judgment, Exhibit 1) for the Mark and raised no objection thereto.

Moreover, Exotics.com specifically raised in the Sixth Affirmative Defense the issue of Fraud and Lack of Authorization. Petitioner entirely fails to respond to Respondent's defense that the very document upon which this motion is based is the product of fraud and was never properly authorized by Exotics.com.

Here, Petitioner, as the moving party, has entirely failed to address, let alone rebut, those defenses in its moving papers. For this reason alone, the motion is fatally defective and should be denied. See Cromeens, Holloman, Sibert, Inc. v. AB Volvo, 2003 U.S. App. LEXIS 22859, * 52-53 (the moving party must be able to overcome each affirmative defense offered by defendant or opposing party to prevail on summary judgment).

E. Respondent Moves, Pursuant to Rule 56(f), For Additional Time to Conduct Required Discovery.

Should the Board incline to give any evidentiary weight to the contrived factual contentions of Petitioner, Respondent respectfully requests, pursuant to rule 56(f), that the motion be stayed so that Respondent can conduct discovery focused on the facts and documents asserted by Petitioner.

Specifically, Respondent is required to conduct the deposition of Scott London, who breached his fiduciary duties as President of Respondent Exotics.com, when he executed the 2001 Amendment in favor of his own company, NY-Exotics. Similarly, Exotics.com will need to request and examine the documents relating to London's activities and the documents relating to the execution of the Amendment, as well as the alleged breaches upon which the present motion is based.

Moreover, Petitioner has taken the unexpected tack of making a witness out of its own counsel, Mitchell S. Shapiro, signatory to the present Motion and to the letters used as sole basis for the claim of "breach." (Petitioner's Motion for Summary Judgment, Exhibits 7, 8). This indicates that Mr. Shapiro evidently has, or claims to have, personal knowledge of the facts relating to the alleged breach and other information central to the Parties' performance of the License Agreement. Accordingly, his deposition will be required in order for Exotics.com to respond to the present motion.

IV. CONCLUSION

Summary judgment should be denied because the validity of the License Amendment, especially the collusive document masquerading as the March 5, 2001 amendment, is hotly disputed by Respondent Exotics, Inc. This is included in a much large dispute that is the subject of two other pending lawsuits. There are numerous issues of fact relating to the wrongful conduct of London that preclude the entry of summary judgment. Moreover, NY Exotics has offered no competent evidence that Exotics.com breached this alleged agreement, and any such contention of breach is hotly disputed by Exotics.com. All of these issues require substantial factual discovery, including the deposition of not only Mr. London himself, but his counsel Mitchell S. Shapiro who purports to have knowledge of the facts set forth in his declaration. Accordingly,

Respondent and Registrant Exotics.com respectfully requests that summary judgment be denied, or, in the alternative, that the motion be stayed pending Rule 56(f) discovery.

Dated: December 4, 2003

Respectfully submitted,


Michael M. Kreiger

Attorneys for Respondent/Registrant
EXOTICS.COM, INC., a Nevada Corp.
EXOTICS.COM, INC., a Delaware Corp.

LIST OF EXHIBITS TO OPPOSITION TO
PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Exhibit

- A. June 01, 1999 action by Exotics.com, Inc. Delaware directors Andrew Maltin et al. accepting transfer of ownership of Exotics.com USA, Inc. to Exotics.com, Inc. Delaware.
- B. June 25, 1999 appointment of Scott London as a Director of Exotics.com, Inc. action by Exotics.com, Inc. Directors.
- C. June 13, 2001 letter of Resignation by Andrew Maltin from the Board of Exotics.com
- D. Oct. 15, 2001 letter from Barry Dugan, Exotics.com CEO, responding to Mitchell S. Shapiro's letter of Oct. 9, 2001.
- E. Jan. 4, 2002, letter from Barry Dugan to Scott London re NY-Exotics license fee arrearages.
- F. Jan. 08, 2002 letter of Resignation by Scott London from the Board of Exotics.com
- G. Declaration of Gary Thomas (with authentication of Exhibits A, B, C, D and H).
- H. Declaration of Barry Duggan (with authentication of Exhibits E, F, G, and I).
- I. Declaration of Adam Siegler (with authentication of Exhibits M and N).
- J. February 18, 2003 Complaint BC290511, Superior Court of the State of California for the County of Los Angeles, *Exotics.com, Inc. v. Andrew Maltin et al.*
- K. April 01, 2003, First Amended Complaint, BC287853, Superior Court of the State of California for the County of Los Angeles, *Gary Thomas et al., v. LA Exotics, Andrew Maltin, et al.*
- L. July 14, 2003, Minute Order of Judge Freeman, Superior Court of California, Los Angeles County, coordinating cases prior to consolidation.
- M. Exotics.com disclosure letter pursuant to Section 5 of the Share Purchase Agreement dated March 8, 2001 and supplement of July 2001.

A

**CONSENT TO ACTION WITHOUT FIRST MEETING
OF
BOARD OF DIRECTORS
OF
EXOTICS.COM, INC.**

The undersigned, being all of the directors of EXOTICS.COM, INC, a corporation organized under the laws of the State of Delaware, by this writing consent to take the following actions, to transact the following business of the corporation and to adopt the following resolutions:

ELECTION OF OFFICERS

RESOLVED, that following individuals are hereby elected to the offices opposite their names:

Andrew Malin

President

Gary Thomas

Secretary and Treasurer

RESOLVED FURTHER, their term of office shall commence immediately and continue until the next annual meeting of the board of directors of the corporation (or a written consent in lieu thereof) and until their respective successors are duly elected and qualified or until their respective earlier resignation or removal.

PRINCIPAL EXECUTIVE OFFICE

RESOLVED, that the principal executive office of the corporation shall be established and maintained at: 10905 Ohio Ave. #309, Los Angeles, CA 90024, or such other place as the board of directors shall, from time to time, determine.

ADOPTION OF BYLAWS

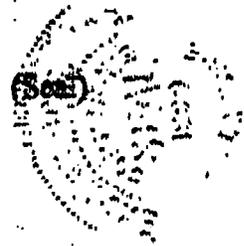
RESOLVED, that the bylaws, entitled "BYLAWS OF EXOTICS.COM, INC., a Delaware Corporation," consisting of eleven (11) pages, are hereby approved, adopted and confirmed as the bylaws of the corporation; and

RESOLVED FURTHER, that the secretary of the corporation is hereby authorized and directed to execute a certificate of the adoption of said bylaws, to insert said bylaws as so certified in the book of minutes of the corporation and to see that a copy of said bylaws, similarly certified, is kept at the principal executive office of the corporation.

CORPORATE SEAL

WHEREAS, it is proposed that there be adopted a seal of the corporation consisting of two concentric circles with the words: "EXOTICS.COM, INC." and the words and figures "1999 Delaware;"

RESOLVED, that the corporate seal in the foregoing form, words and figures is hereby adopted as the seal of the corporation.



FISCAL YEAR

RESOLVED, that this corporation adopt a fiscal year-ending December 31 or such other fiscal year as the board of directors may determine.

PAYMENT OF EXPENSES

RESOLVED, that the President or the Treasurer of this corporation are authorized and directed to pay the expenses of its incorporation and organization, including effecting reimbursement to any person or persons who have advanced funds to or for the benefit of the corporation for such purposes, and payment of any amounts remaining owing to the corporation's attorney and/or accountant for services in connection therewith.

FORM OF STOCK CERTIFICATE

RESOLVED, that the form of stock certificate attached to these resolutions is approved and adopted as the form of stock certificate to be used by the corporation.

ISSUANCE OF STOCK

WHEREAS, the board of directors desires to issue and offer for sale shares of common stock authorized by the corporation's articles of incorporation; and

WHEREAS, Andrew Maltin, Gary Thomas, and Lea Hastings have offered to transfer all of their respective right, title, and interest, in and to their respective membership interests, in and to Exotics USA, LLC, a Georgia limited liability company ("LLC") as of the close of business on May 31, 1999, in exchange for this corporation's common stock;

RESOLVED, that the officers of this corporation be, and they hereby are, authorized to sell and issue the following shares of capital stock of this corporation in consideration of the transfer of the assets and liabilities of the LLC, as more fully set forth in Exhibit "A" attached hereto, in exchange for the following shares of this corporation's stock:

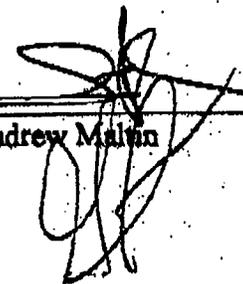
<u>Name of Party</u>	<u>Number of Shares</u>
Andrew Malin	48,500
Gary Thomas	48,500
Lea Hastings	3,000

RESOLVED FURTHER, that this corporation is a small business corporation as defined in Section 1244 of the Internal Revenue Code, and that the shares of its capital stock to be sold and issued hereunder shall be sold and issued to the extent they qualify as such pursuant to Section 1244 of the Internal Revenue Code; and

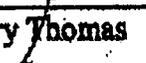
RESOLVED FURTHER, that the officers of the corporation are hereby authorized and directed to prepare or cause to be prepared, verified and filed on behalf of the corporation such reports and filings with the appropriate securities agencies relating to the issuance of shares of the corporation's capital stock, reflecting such issuance for the authorized amount.

The foregoing resolutions are hereby adopted by the board of directors of this corporation without a meeting.

Dated: June 1, 1999



Andrew Malin



Gary Thomas



**UNANIMOUS CONSENT TO ACTION
BY
BOARD OF DIRECTORS
OF
EXOTICS.COM, INC.**

B

The undersigned, being all of the directors of EXOTICS.COM, INC., a corporation organized under the laws of the State of Delaware, by this writing consent to take the following actions, to transact the following business of the corporation and to adopt the following resolutions:

ISSUANCE OF STOCK

WHEREAS, the corporation has received an offer to sell 8,110 shares, representing 7.5% of this corporation's issued and outstanding common stock to Red Rock, LLC, a Delaware limited liability company, for a purchase price of \$300,000.00, pursuant to the terms of a Subscription Agreement, of even date herewith, between this corporation and Red Rock, LLC;

WHEREAS, as an inducement to Red Rock, LLC to enter into the Subscription Agreement, this corporation has agreed to enter into an Option Agreement with Red Rock, LLC, whereby Red Rock, LLC shall have the option to purchase up to an additional 7.5% of this corporation's shares, as more set forth in an Option Agreement, of even date herewith, between this corporation and Red Rock, LLC;

WHEREAS, as further inducement to Red Rock, LLC to enter into the Subscription Agreement, this corporation has agreed to become a party to a Shareholders Agreement, of even date herewith, by and among certain of the shareholders of this corporation; and

WHEREAS, the board of directors has carefully reviewed the terms and conditions of the Subscription Agreement, Option Agreement, and Shareholders Agreement and believes that it is in this corporation's best interests to execute and become a party to the foregoing agreements,

RESOLVED, that the sale of the this corporation's shares and the grant of options to purchase shares to Red Rock, LLC pursuant to the terms of the Subscription Agreement, and Option Agreement, and this corporation's agreement to become a party to the Shareholders Agreement, are hereby ratified and approved; and

RESOLVED FURTHER, that the officers of the corporation are hereby authorized and directed to prepare or cause to be prepared, verified and filed on behalf of the corporation such reports and filings with the appropriate securities agencies relating to the issuance of shares of the corporation's capital stock, reflecting such issuance for the authorized amount, and to take any and all actions necessary in furtherance of the foregoing resolutions.

APPOINTMENT OF DIRECTOR

WHEREAS, the bylaws of this corporation provide that the board of directors shall consist of three members;

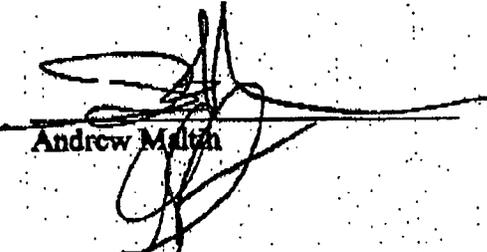
WHEREAS, there is presently a single vacancy on the board of directors; and

WHEREAS, pursuant to the terms of the Shareholders Agreement, described above, this corporation has agreed to appoint Scott London, a designee of Red Rock, LLC to this corporation's board of directors;

RESOLVED, that Scott London is hereby appointed as a director of this corporation, his term of office shall commence immediately and continue for the time specified in the Shareholders Agreement or until his earlier resignation.

The foregoing resolutions are hereby adopted by the board of directors of this corporation without a meeting.

Dated: June 25, 1999



Andrew Maltin

Gary Thomas

FROM: LA EXOTICS

PHONE NO. : 310 275 4110

Jun. 15 2001 10:14AM Fz

Math

June 13, 2001

To the Board of Directors of
Exotics.com, Inc. (Delaware)

Re: Resignation

Gentlemen:

Please be advised that I hereby tender my resignation as an officer and director of
the Company to be effective as of 12:01 AM PDT, June 19, 2001.



Andrew Martin



October 15, 2001.

Mr. Mitchell S. Shapiro,
Foley & Lardner,
2029 Century Park East,
Suite 3500,
Los Angeles, California,
90067-3021

Dear Sir:

Re: Exotics USA, LLC

In response to your letters of August 9th, August 28th, and October 9th, I have had conversations with your client, Mr. Scott London, in an attempt to solve the issues. I shall attempt to bring to the forefront some of Exotics USA, LLC's concerns in this regard, that were not covered by Jeff Shumway's response of August 27 to your letter of August 9, 2001.

1. Mr. London was signatory to the licensing agreement of October 15, 1997 that he entered in to with Exotics USA; and subsequently entered into a second licensing agreement on November 9, 1999, as an officer of London Exotics, Ltd., licensing for the territory defined as the United Kingdom; and then for a period of in excess of four months in the year 2000, he was the senior executive officer of the company. Mr. London's responsibility was for the overall operations of Exotics USA, which included the marketing of various city web sites under licensing agreements. Now, one year later, Mr. London makes claims that the licensing program that he was selling and promoting is not a legal program.

At this point, I am not going to debate the pros and cons of the definitions of a licensing program verses a franchise program, but only trying to make the point that your client not only became a licensee a number of years ago, but also, managed, marketed, and sold the current licensing program as a paid employee of the company without any inhibitions.

Regarding the concern of the Atlantic City Exotics territory, I agree with you and your client that this is covered under the New York territory and I would be more than pleased to have an operator of his caliber in charge. (Point #4 of your October 9, 2001 letter.)

2. In regards to the period of August 3 through August 5 of 2001, where the servers of exotics were inoperable, I have discussed this with your client and have asked for what he felt the incurred loss was, and to date have received no response.

In order to alleviate this, I have offered a credit to New York Exotics in the amount of \$15,000.

3. The sale of "unapproved" advertising for the New York website, that adversely impacted the image and marketing efforts of New York has been rectified. I can assure your client that all concerned will properly approve all future national advertising, which goes beyond the current available Exotic network positioning within the site.



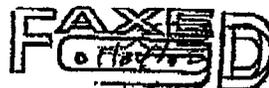
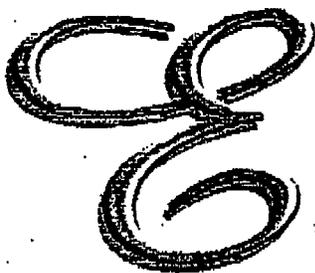
As your client is a director of Exotics.com, Inc., he is well aware of the concerns that I have in regards to the rectifying of his problems. I feel that as a member of the board of Exotics his duty is to assist the other board members to build the company and to be a leader amongst the franchisees. The withholding of franchise fees that date back beyond the first week of August is a breach of the New York agreement. This action also impairs the company cash flow and its ability to meet some of its obligations. I am not asking for all the funds due, but I feel that a holding back the \$15,000 that I previously mentioned is fair.

Your client is one of our oldest licensees and I look forward to continuing our relationship with him and his staff.

Yours very truly,



Barry F. Duggan
CEO



January 4, 2002.

Mr. Scott London,
New York-Exotics,
1350 Broadway,
Suite #1213,
New York, New York
10018

Sent via fax: 212-643-3277

Dear sir:

At this time you have an estimated outstanding balance of \$ 44,177.90 with Exotics-USA. In line with our Licensing Agreement, we ask that you make this payment within 10 days. Failure to comply will initiate further action through our attorneys.

This will be the only letter sent to you in this regard.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Duggan'.

Barry Duggan
CEO
Exotics.com, Inc.

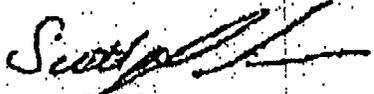
01-29-02 09:26pm From-JENKINS GILCHRIST

January 8, 2002

Barry Duggan
Ingo Mueller
1700 West Pender
Vancouver BC V6E2S9

I hereby resign from the board of directors of Exonics.com Inc. effective January 8, 2002

Yours truly,



Scott London

SL 00151

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

NY-EXOTICS, INC.	}	Cancellation No. 92/040976
Petitioner	}	
	}	Registration No. 2,576,808
vs.	}	
	}	Mark: NY-EXOTICS.COM
EXOTICS.COM, INC.	}	
Respondent/Registrant	}	DECLARATION OF GARY THOMAS

DECLARATION OF GARY THOMAS

I, Gary Thomas, declare as follows:

I am over twenty-one years of age, have personal knowledge of the matters set forth herein and each of them is true and correct.

1. I was a founder and member of the Board of directors of both Exotics USA, Inc. and of the successor to its assets, Exotics.com, Inc., a Delaware corporation (collectively *Exotics* unless otherwise indicated). From June 1999 through September of 2001, I was the Chief Executive Officer responsible for running the day-to-day operations of Exotics Delaware. Subsequently I was a consultant to Exotics.

2. More specifically, I was a co-founder of LA Exotics LLC ("LA Exotics"), and the sole investor, who financed the first operating Exotics office. Due to the success of LA Exotics, Exotics USA LLC was formed for the purpose of expanding the LA Exotics business model into other cities. Exotics ultimately acquired approximately 1,000 exotics related Uniform Resource Locators (URLs) and domain names. In or about June 1999, Exotics.com Inc., a Delaware corporation (hereinafter "Exotics-DE") was formed and all assets of Exotics USA LLC were transferred to Exotics-DE, in which Andrew Maltin and I became the majority shareholders. (Exhibit A) Subsequently, as part of a reverse merger, Exotics-DE became a subsidiary of Exotics.com, Inc., a Nevada Corporation.

3. I personally became acquainted with Scott London in approximately August or September of 1997 when he approached me about operating a New York branch of Exotics.com. Scott's purchase of the license for New York Exotics was finalized in approximately October or November of 1997. In May 1999, Scott formed another company called Red Rock LLC, for the specific purpose of investing in Exotics, USA LLC. Red Rock LLC, expressed an interest to invest approximately \$300,000 in Exotics-DE (at that time, Exotics USA LLC). As a condition to the investment, Red Rock LLC insisted upon the formation of a new corporation. Thus, Exotics-DE was formed and, as seen in Exhibit A, in 1999 all stock and assets of Exotics USA were acquired by the newly formed Delaware corporation Exotics.com, Inc.

4. The managing director of Red Rock was Scott London, also President and director of NY-Exotics. At that time (June 1999) London also became director of Exotics.com, Inc.-DE as designee of Red Rock (Exh. B), other directors being Andrew Maltin and myself.

5. Prior to making the investment, there were several meetings, at which Scott and Warren (another member of Red Rock LLC) were in attendance, where it was made clear that all assets, including URLs and domain names and licensing agreements, would be transferred by Exotics USA LLC to Exotics-DE. On several occasions, Scott requested Exotics-DE to simply give the New York URLs to him. At no time while I was acting Chief Executive Officer of Exotics-DE did Exotics-DE agree to assign the New York URLs, trademarks or other intellectual property to Scott or NY-Exotics.

6. During the period of December 1999 through July 2000, Scott (along with other members of Red Rock, LLC) and a new company he was forming, Newco, were attempting to purchase Exotics-DE. A letter of intent of purchase Exotics-DE was submitted, and Scott retained an attorney to perform a due diligence. While the due diligence was being performed, Scott became acting Chief-Executive Officer of Exotics-DE. As the acting Chief Executive Officer, Scott became intimately familiar with the company and directed

expenditures totaling approximately \$250,000.00.

7. The purported March 5, 2001 Amendment (Petitioner's Exh. 6) to the licensing agreement between NY-Exotics, Inc. and Exotics USA, Inc. never came before the Board or was otherwise authorized. Indeed I was unaware of such a document. Moreover, as of that date Exotics USA, Inc. was an empty shell after its assets were transferred to Exotics, Inc.-DE in June 1999, almost two years earlier.

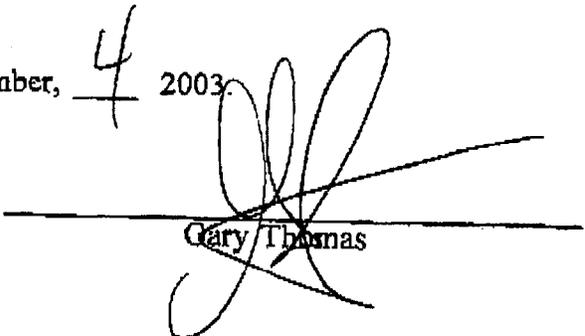
8. The document attached as Exhibit A of the Opposition is a true and correct copy of the June 1, 1999 Consent to Action by the Board meeting of Exotics.com, Inc.-DE.

9. The document attached as Exhibit B of the Opposition is a true and correct copy of the June 25, 1999 Consent to Action by the Board meeting of Exotics.com, Inc.-DE.

10. The document attached as Exhibit C of the Opposition is a true and correct copy of the June 15, 2001 letter in which Andrew Maltin resigned from the Board of Exotics.com, Inc.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

This declaration was executed on December, 4 2003.



Gary Thomas

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

NY-EXOTICS, INC.
Petitioner

vs.

EXOTICS.COM, INC.
Respondent/Registrant

Cancellation No. 92/040976

Registration No. 2,576,808

Mark: NY-EXOTICS.COM

DECLARATION OF BARRY DUGGAN

DECLARATION OF BARRY DUGGAN

I, Barry Duggan, declare as follows:

I am over twenty-one years of age, have personal knowledge of the matters set forth herein and each of them is true and correct.

1. I was a CEO from September 15, 2001 until November 29, 2002, of Exotics.com, Inc., a Delaware corporation.

2. Directors of Exotics-Delaware through early 2002, were myself and Ingo Mueller of St. George Capital, and Scott London who was also CEO and Director of NY-Exotics, Inc., one of our licensees.

3. I was familiar with the license Agreement for NY-Exotics, including its two Amendments (Petitioner's Exhibits 3, 4, and 5) which did not include the purported March 5, 2001 Amendment (Petitioner's Exhibit 6). It is inconceivable that Exotics.com would ever agree to the transfer of NY-EXOTICS.COM or other intellectual property since these were the key assets of the company, NY-EXOTICS.COM representing 30-50% of the company's revenue potential.

4. The document attached as Exhibit D to Respondent's Opposition is a true and correct copy of my Oct. 15, 2001 response to Mitchell S. Shapiro's October 9, 2001 and

earlier letters. As to his December letter, I took this as only so much legal huffing-and-puffing since I had heard no such thing from Scott London, i.e., threats of termination for a shopping list of breaches which in any event we strongly disputed. Rather, I took Mr. Shapiro's letters to be only so much "fluff" designed to give Scott London a reason to delay payments due under our license agreement.

5. The document attached as Exhibit E of the Opposition is a true and correct copy of my January 4, 2002 letter to Scott London seeking payment of overdue licensing fees. At the time the license agreement was still in full force and effect.

6. The document attached as Exhibit F of the Opposition is a true and correct copy of the letter dated January 8, 2002 from Scott London resigning from the Exotics.com-Delaware Board of Directors.

7. The document attached as Exhibit M of the Opposition is a true and correct copy of the Exotics.com disclosure letter pursuant to Section 5 of the Share Purchase Agreement dated March 8, 2001.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This declaration was executed on the 4 day of December, 2003.


Barry Duggan

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

NY-EXOTICS, INC.
Petitioner

vs.

EXOTICS.COM, INC.
Respondent/Registrant

) Cancellation No. 92/040976

) Registration No. 2,576,808

) Mark: NY-EXOTICS.COM

) **DECLARATION OF ADAM SIEGLER
IN SUPPORT OF OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT**

DECLARATION OF ADAM SIEGLER

I, Adam Siegler, declare as follows:

I am over twenty-one years of age, have personal knowledge of the matters set forth herein and each of them is true and correct.

1. I am an attorney at law and member of the State Bar of California. I represent the Respondent/Registrant Exotics.com, Inc.-Delaware and related Exotics.com, Inc.-Nevada (collectively, *Exotics*) in civil actions BC287853 and BC290511 in the Superior Court of the State of California for the County of Los Angeles (*Action 1* and *Action 2*, respectively).

2. Action 1 was filed January, 2003 by Gary Thomas against, *inter alia*, Andrew Maltin, both of whom are former directors of Exotics.com, Inc. (Delaware), and an amended complaint was filed on April 1, 2003. Action 2 was filed on February 18, 2003, against Andrew Maltin, individually and in his role as a former director of Exotics.com, Inc., a Delaware Corporation.

3. The document attached as Exhibit L to Respondent's "Opposition to Motion for Summary Judgment" (the *Opposition*) is a true and correct copy of the July 14, 2003 Minute Order of the Order Coordinating the two cases by Superior Court Judge Kenneth Freeman.

4. The document attached as Exhibit K to Respondent's Opposition is a true and correct copy of the conformed copy of the Amended Complaint in Action 1.

5. The document attached as Exhibit J to Respondent's Opposition is a true and correct copy of the conformed copy of the Complaint in Action 2, which the Court upheld as against demurrers on July 31, 2003. Currently we are awaiting further discovery responses from Maltin, among which we expect to receive evidence relating to the improper "sale" of the NY-Exotics name orchestrated by Maltin and Scott London. This additional evidence will bear directly on the point that Petitioner's Exhibit 6, the March 5, 2001, "Amendment" is a fraudulent document which was not approved by or in the best interests of Exotics.com.

6. On reviewing Petitioner's Exhibit list in the present Motion for Summary Judgment, it appears that the documents identified as Exhibits 3 through 9 which were designated as "Confidential" were already in our possession as part of our file or our client's files in the above Action 1 and Action 2, or else were produced in the course of that litigation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This declaration was executed on the 4th day of December, 2003.


Adam Siegler



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1 Sanford M. Ehrmann, Esq. (State Bar No. 26708)
2 9606 Santa Monica Boulevard, 3rd Fl.
3 Beverly Hills, California 90210-4420
4 Telephone: (310) 859-6644
5 Telecopy: (310) 273-5403

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

FEB 18 2003

John A. Clarke, Executive Officer/Clerk
By STEPHANIE SIANEZ, Deputy

6 Attorney for Plaintiffs
7 EXOTICS.COM, INC. a Nevada Corporation,
8 EXOTICS.COM, INC. a Delaware Corporation,
9 formerly known as EXOTICS USA, LLC

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

12 **BC290511**

13 EXOTICS.COM, INC., a Nevada
14 corporation;
15 EXOTICS.COM, INC., a Delaware
16 corporation,
17 formerly known as EXOTICS USA, LLC,

18 Plaintiffs,

19 vs.

20 ANDREW MALTIN, individually, and as
21 former director of EXOTICS.COM, INC.,
22 a Delaware corporation,

23 Defendants.

CASE NO.

COMPLAINT FOR:

- 1) CONVERSION
- 2) BREACH OF FIDUCIARY DUTY
- 3) FRAUD
- 4) INTERFERENCE WITH CONTRACT
- 5) INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
- 6) UNFAIR COMPETITION
- 7) DECLARATORY RELIEF
- 8) ACCOUNTING
- 9) INJUNCTIVE RELIEF

24 Plaintiffs Exotics.Com, Inc., a Nevada corporation (Exotics Nevada), and
25 Exotics.Com, Inc. a Delaware corporation, formerly known as Exotics USA, LLC
26 ("Exotics Delaware"), for their Complaint herein, allege as follows:
27
28

1 **ALLEGATIONS COMMON TO ALL COUNTS**

2 **Formation Of Exotics USA (Predecessor to Exotics Delaware)**

3 7. In September 1997, Gary Thomas ("Thomas"), Maltin and Lea Hastings
4 ("Hastings") founded Exotics USA, LLC, the Georgia limited liability company which is
5 the predecessor to Exotics Nevada.

6 8. In April 1999, Thomas, Maltin and Hastings entered into a settlement
7 agreement and release which among other things, set forth their respective percentage
8 ownership interests in Exotics USA. As a result, Thomas and Maltin collectively held
9 97%, and Hastings held 3% of Exotics USA.

10
11 **Business Plan And Use Of City Exotics Domain Names and URLs**

12 9. Exotics USA was engaged in providing on-line classified ads, aimed at a
13 more sophisticated, adult and urban audience, similar to those printed in such publications
14 as *LA Weekly*. Thomas, Maltin and Hastings had already had considerable success with
15 this business model in a company they had founded as LA Exotics (not a party hereto),
16 and the new Exotics USA entity was envisioned as the umbrella company for a series of
17 similar operations throughout cities in the U.S. and elsewhere.

18 10. The business plan therefore called for acquiring a series of domain names
19 for cities throughout the United States, all of which consisted of a city name followed by
20 the suffix "exotics," such as "sandiego-exotics.com," "vegas-exotics.com," and "miami-
21 exotics.com." Each of these domain names would be licensed to operators in each of the
22 respective cities, and Exotics USA would derive income from the license fees and related
23 revenue. Each of the operators was required to acknowledge that Exotics USA remained
24 the owner of the domain name. For example, in 1999, LA Exotics, LLC entered into a
25 standard licensing agreement with Exotics USA, which specifically stated that the
26 Licensor (Exotics USA) was the owner of all right, title and interest in and to the URL.

27 11. Thus, the ownership and maintenance of the city-exotics domain names was
28 an essential component of the Plaintiffs' business plan.

1 **Acquisition of URLs By Maltin On Behalf Of Plaintiffs**

2 12. It was Maltin's duty, on behalf of Exotics USA, to acquire as many city
3 name-exotics.com URL's as possible, and in particular to acquire the domain names for
4 every US major metropolitan market . As each URL was registered, using a boilerplate
5 registration form, Maltin listed himself as the administrative contact, with Exotics USA as
6 the registered owner.

7 13. All of the URL's Maltin registered on behalf of Exotics USA were paid for
8 by Exotics USA, as were all of the expenses associated with registering them. If Maltin
9 paid for any URL's or any such expenses, he was later reimbursed by Exotics USA. The
10 address utilized for registration purposes was Exotics USA's address located at 8405
11 Pershing Drive, Suite 407, Playa del Rey, California. The address utilized for registration
12 purposes was Exotics USA's address located at 8405 Pershing Drive, Suite 407, Playa del
13 Rey, California. Once all of the major US city name-Exotics.com URL's had been
14 acquired, it became the primary responsibility of Maltin to interview business opportunity
15 candidates in each local US market it was expanded into and consummate a sale and
16 execute a licensing agreement between Exotics USA and new local business owners
17 leveraging the city name-Exotics.com URL's as the primary proprietary asset of each of
18 the licensing agreements. The licensing agreements, signed by Maltin on behalf of
19 Exotics USA, specifically stated that the Licensor (Exotics USA, LLC) was the owner of
20 all right, title, and interest in and to the URL. Maltin executed approximately 25
21 licensing agreements with identical language on behalf of Exotics USA.

22
23 **Formation of Plaintiff Exotics Delaware**

24 14. In or about June 1999, Red Rock, LLC, a Delaware limited liability ("Red
25 Rock"), expressed an interest to invest substantial funds into Exotics USA. As a
26 condition precedent to the investment, Red Rock required the formation of a new
27 corporation. Therefore, Exotics Delaware was formed, with Thomas, Maltin, and a
28 designee of Red Rock (Scott London) to serve as the three Directors on the Board of

1 Exotics Delaware. All of the assets of Exotics USA, were accordingly assigned to
2 Exotics Delaware.

3 15. During the period of December 1999 through July 2000, London, through a
4 new company he was forming, was in the process of making an offer to purchase Exotics
5 Delaware. A letter of intent to purchase Exotics Delaware was submitted, and Scott
6 London retained an attorney to perform a due diligence. While the due diligence was
7 being performed, London became acting Chief Executive Officer of Exotics Delaware.

8 16. As acting Chief Executive Officer, London and his attorneys instructed
9 Maltin to make certain that all URL's were held in the name of Exotics Delaware and
10 reflected that company's corporate address. Maltin was also responsible for working with
11 and directing the legal counsel of Exotics Delaware to register the URL's in the name of
12 Exotics Delaware. At that time, there were URL's that still showed Exotics USA as the
13 registered owner.

14 17. By June of 2000, all URL's reflected Exotics Delaware as the registered
15 owner, with the office location being 8484 Wilshire Blvd., Beverly Hills, California. All
16 of the URL's Maltin registered or had registered on behalf of Exotics Delaware were
17 either paid directly or through Exotics Delaware's counsel.

18
19 **Formation of Plaintiff Exotics Nevada**

20 18. In or about December 1999, St. George Capital Corp., a Canadian
21 corporation (St. George), entered into an Agreement with Maltin and Thomas whereby St.
22 George would advance funds to Exotics Delaware as necessary. This Agreement was
23 predicated on Exotics Delaware owning the URL's, which Maltin warranted verbally and
24 in writing was the case. Over the next several months, negotiations continued with St.
25 George that eventually resulted in the parties agreeing to merge Exotics Delaware with a
26 new public company, Exotics Nevada.

27 19. On March 5, 2001, the Board of Directors of Exotics Delaware ratified the
28 proposed merger with Exotics Nevada. The merger agreement contained, among other

1 things, representations that Exotics Delaware had clear title to all of its assets (tangible
2 and intangible). There were no exclusions in the Disclosure Letter pursuant to Section 5
3 of the Agreement that gave any personal right to Maltin to own or control the URL's.

4 20. Maltin executed the Merger Agreement as an officer and director of Exotics
5 Delaware and voted for the Agreement. Pursuant to the Merger Agreement, Exotics
6 Nevada had certain obligations that needed to be performed under the Agreement, namely
7 a capital investment into Exotics Delaware of \$2,000,000.

8 21. At this juncture, Maltin indicated that he wanted to be bought out of his
9 interest in the business.

10 22. Accordingly, Thomas agreed to purchase Maltin's shares of Exotics
11 Delaware for the sum of \$130,000.00, and a Settlement and Release Agreement was
12 thereafter executed on June 6, 2001, in which it was specifically recited that Maltin's
13 name was to be removed from all documentation associated with Exotics Delaware.

14 23. Maltin submitted his resignation as a Director of Exotics Delaware on or
15 about June 13, 2001.

16
17 **Maltin's Conversion Of The URL's**

18 24. On or about June 4, 2001, however, unbeknownst to either Thomas or
19 Plaintiffs Exotics Nevada and Exotics Delaware, and without their consent or approval,
20 Maltin had secretly had all of the URL's changed into his own name and had given his
21 personal address and e-mail address as the new contact points.

22 25. Plaintiffs are informed and believe that Maltin also, at a date unknown, and
23 again without consent or approval of Plaintiffs, purported to transfer the URL's for New
24 York, Miami, Los Angeles and Las Vegas to each of the respective Licensees.

25 26. Plaintiffs have made repeated demands to Maltin to return the URL's:
26 among others, Plaintiffs' counsel, Jeff Shumway, demanding that Maltin turn back over
27 the URL's to Exotics Delaware; and similar written demands sent by Thomas to Maltin.

28

1 shares of Exotics Delaware for the sum of \$130,000.00. At the time of this Agreement,
2 Exotics Nevada had an agreement to acquire all of the assets of Exotics Delaware by the
3 merging of Exotics Delaware with Exotics Nevada. This transaction was predicated on
4 Exotics Delaware owning the URL's which Defendant Maltin warranted was the case.
5 Defendant Maltin intentionally and maliciously falsely represented to Plaintiffs that the
6 assets of Exotics Delaware, including the URL's, were in place, when in truth and fact
7 Defendant Maltin knew said representations to be false.

8 44. The misrepresentations by Maltin were false, were known to be false when
9 made, and were made with intention of inducing Plaintiffs to act in reliance thereon.

10 45. Plaintiffs actually and reasonably relied upon the misrepresentations made
11 by Maltin.

12 46. As a direct and proximate result of Maltin's acts of fraud and deceit,
13 Plaintiffs have suffered damages in an amount according to proof at trial.

14 47. Plaintiffs are informed and believe that in doing the things alleged herein,
15 Defendants acted despicably, with malice, fraud and oppression, and with ill-will and
16 animus toward Plaintiffs. Accordingly, Plaintiffs seek an award of punitive damages
17 against Defendants and each of them, according to their respective wealth and financial
18 condition, in an amount sufficient to punish them and deter them from such misconduct in
19 the future.

20
21 **FOURTH CAUSE OF ACTION**

22 **(Interference with Contract And Conspiracy -**

23 **Against All Defendants)**

24 48. Plaintiffs incorporate by reference Paragraphs 1 through 47, inclusive, of
25 this Complaint, as though fully set forth in this place.

26 49. Plaintiffs have or had contractual relationships with licensees and other
27 organizations in Plaintiffs' markets.

1 50. Plaintiffs are informed and believe that Maltin has contacted other licensees
2 of Plaintiffs and induced them to cancel their agreements with Plaintiffs. Among other
3 things, Maltin induced Exotics.com San Diego to cancel its license agreement with
4 Exotics Delaware and move from the Exotics Delaware server to Maltin's individual
5 server.

6 51. Maltin's actions have also had the effect of damaging and interfering with
7 the contractual relationships of Exotics Nevada and Exotics Delaware and their respective
8 licensees. Among other things, due to Maltin's unauthorized actions, New York Exotics,
9 Miami Exotics, Las Vegas Exotics and Los Angeles Exotics have refused to pay the fees
10 as required under the terms of the individual License Agreements first executed with
11 Exotics USA, resulting in great economic hardship and damage to Plaintiffs.

12 52. Plaintiffs are informed and believe that Maltin was and is well aware of the
13 existence and importance of all of these contractual relationships.

14 53. Plaintiffs are informed and believe that Defendants agreed and conspired to
15 interfere with Plaintiffs' advantageous contractual relationships.

16 54. Plaintiffs are informed and believe that Defendants have intentionally and
17 unlawfully interfered with each and all of these contractual relationships.

18 55. Plaintiffs are informed and believe that Defendants intentionally interfered
19 for the unlawful and improper purposes of crippling Plaintiffs' ability to develop their
20 own businesses.

21 56. Plaintiffs are informed and believe that Defendant intentionally interfered
22 with Plaintiffs' contractual relationships by improper means, including unlawfully
23 transferring rights or interests in domain names that belong to Plaintiffs.

24 57. As a direct and proximate result of Defendant's interference, the
25 contractual relationships and advantages have been damaged or lost, and Plaintiffs have
26 suffered damages in an amount to be proven at trial, estimated in excess of \$500,000.00.

27 58. Plaintiffs are informed and believe that in doing the things alleged herein,
28 Defendant acted despicably, with malice, fraud and oppression, and with ill-will and

1 animus toward Plaintiffs. Accordingly, Plaintiffs seek an award of punitive damages
2 against Defendants and each of them, according to their respective wealth and financial
3 condition, in an amount sufficient to punish them and deter them from such misconduct in
4 the future.

5
6 **FIFTH CAUSE OF ACTION**

7 **(Interference with Prospective Economic Advantage And Conspiracy -**
8 **Against All Defendants)**

9 59. Plaintiffs incorporate by reference Paragraphs 1 through 58, inclusive, of
10 this Complaint, as though fully set forth in this place.

11 60. Plaintiffs have or had valuable economic relationships with both their
12 current licensees and potential licensees and other companies in the market.

13 61. Plaintiffs are informed and believe that Maltin has contacted other licensees
14 or potential licensees of Plaintiffs and induced them not to work with Plaintiffs but
15 instead to transfer their business to Maltin.

16 62. Maltin's actions have had the effect of damaging and interfering with the
17 prospective economic advantage that Plaintiffs enjoyed. Among other things, due to
18 Maltin's unauthorized actions, New York Exotics, Miami Exotics, Las Vegas Exotics and
19 Los Angeles Exotics have refused to pay the fees as required under the terms of the
20 individual License Agreements first executed with Exotics USA, resulting in great
21 economic hardship and damage to Plaintiffs.

22 63. Plaintiffs are informed and believe that Maltin was and is well aware of the
23 existence and importance of all of these prospective economic advantages.

24 64. Plaintiffs are informed and believe that Defendants agreed and conspired to
25 interfere with Plaintiffs' prospective economic advantages.

26 65. Plaintiffs are informed and believe that Defendants have intentionally and
27 unlawfully interfered with each and all of these prospective economic advantages.

28

1 **NINTH CAUSE OF ACTION**

2 **(Injunctive Relief- Against All Defendants)**

3 83. Plaintiffs incorporate by reference Paragraphs 1 through 82, inclusive, of
4 this Complaint, as though fully set forth in this place.

5 84. Plaintiffs are informed and believe that, unless restrained by this Court,
6 Maltin will continue to engage in acts of conversion and, in particular, is imminently
7 likely to transfer, sell, or otherwise encumber the URL's which are the lawful property of
8 Plaintiffs.

9 85. Plaintiffs will suffer irreparable injury, because the domain names are
10 unique and are essential to Plaintiffs' business plan.

11 86. There is imminent likelihood of further transfers by Maltin, given his
12 deceitful conversion of the URL's and his subsequent attempts to transfer rights or
13 interests in the URL's to Plaintiffs' licensees.

14 87. Accordingly, Plaintiffs seek temporary, preliminary and permanent
15 injunctive relief against Defendant Maltin, all other Defendants, and all persons acting in
16 concert with them, enjoining and restraining them from taking any act with respect to the
17 URL's which is inconsistent with Plaintiffs' rights therein, and specifically enjoining all
18 such persons from transferring, selling or encumbering the URL's while this litigation is
19 pending, and mandatory injunctive relief requiring Maltin to return to Plaintiffs all
20 ownership and control of the URL's belonging to Plaintiffs.

21
22 **PRAYER**

23 WHEREFORE, Plaintiffs pray for judgment as follows:

24 **On the First Cause of Action:**

- 25 1. For the return of all property belonging to Plaintiffs.
26 2. For damages in an amount according to proof at trial, in an amount in
27 excess of the jurisdictional minimum of Superior Court.
28 3. For exemplary damages.

1 On the Second Cause of Action:

- 2 1. For damages in an amount according to proof at trial, in an amount in
3 excess of the jurisdictional minimum of Superior Court.
4 2. For exemplary damages.

5 On the Third Cause of Action:

- 6 1. For damages in an amount according to proof at trial, in an amount in
7 excess of the jurisdictional minimum of Superior Court.
8 2. For exemplary damages.

9 On the Fourth Cause of Action:

- 10 1. For damages in an amount according to proof at trial, in an amount in
11 excess of the jurisdictional minimum of Superior Court.
12 2. For exemplary damages.

13 On the Fifth Cause of Action:

- 14 1. For damages in an amount according to proof at trial, in an amount in
15 excess of the jurisdictional minimum of Superior Court.
16 2. For exemplary damages.

17 On the Sixth Cause of Action:

- 18 1. Restoration of money and property acquired by unfair competition.
19 2. Injunctive relief.

20 On the Seventh Cause of Action:

- 21 1. For a declaratory judgment that Plaintiffs are the rightful owners of the city-
22 exotic URLs, and that Maltin has no right to own, administer, use, sell,
23 transfer, or exploit these URLs.

24 On the Eighth Cause of Action:

- 25 1. For an accounting for all money and property, and all proceeds of the same,
26 which have been in the possession or control of Defendants.

27 On the Ninth Cause of Action:

- 28 1. For temporary, preliminary and permanent injunctive relief against

1 Defendant Maltin, all other Defendants, and all persons acting in concert
2 with them, enjoining and restraining them from taking any act with respect
3 to the URL's which is inconsistent with Plaintiffs' rights therein, and
4 specifically enjoining all such persons from transferring, selling or
5 encumbering the URL's while this litigation is pending.

- 6 2. For mandatory injunctive relief requiring Maltin to return to Plaintiffs all
7 ownership and control of the URL's belonging to Plaintiffs.

8
9 On All Causes of Action:

- 10 1. For costs;
11 2. For reasonable attorney's fees; and
12 3. For such other and further relief as the Court may deem appropriate.

13
14
15 Dated: February 10, 2003

Respectfully submitted,

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17 _____
Sanford M. Ehrmann
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COPY

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OF ORIGINAL FILED
Los Angeles Superior Court

APR 01 2003

John A. Clarke, Executive Officer/Clerk
By ERIKA BROWN, Deputy

7 Attorneys for Plaintiff GARY THOMAS aka GARY VOJTESAK

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

12 GARY THOMAS aka GARY
VOJTESAK, individually, and as a
13 member of LA EXOTICS, LLC, a Georgia
limited liability company,

14 Plaintiff,

15 vs.

16 LA EXOTICS, LLC, a Georgia limited
17 liability company; ANDREW MALVIN,
18 individually, and as a member of LA
EXOTICS, LLC; LEA HASTINGS aka
19 LEA CONKEY, individually and as a
member of LA EXOTICS, LLC; and
DOES 1 - 100, inclusive,

20 Defendants.

CASE NO. BC 287853

FIRST AMENDED COMPLAINT
FOR:

- 1) CONVERSION OF MONEY
- 2) BREACH OF FIDUCIARY DUTY
- 3) INTENTIONAL MISREPRESENTATION
- 4) NONDISCLOSURE
- 5) INTERFERENCE WITH CONTRACT
- 6) DECLARATORY RELIEF
- 7) BREACH OF CONTRACT
- 8) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
- 9) ACCOUNTING
- 10) INJUNCTIVE RELIEF
- 11) CONSTRUCTIVE TRUST
- 12) APPOINTMENT OF RECEIVER

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Plaintiff Gary Thomas aka Gary Vojtesak, an individual, and a member of LA Exotics, LLC, a Georgia limited liability company ("Thomas"), alleges as follows:

INTRODUCTION

1. Plaintiff Thomas seeks redress for Defendant Andrew Maltin's ("Maltin") wrongful transfer and exploitation of internet website addresses, or Uniform Resource Locators ("URLs"), which URLs were the primary assets of a business built by Thomas, Maltin and Defendant Lea Hastings aka Lea Conkey ("Hastings"). Plaintiff Thomas further seeks damages and provisional relief from Maltin's and Hastings' abuse of control over LA Exotics, LLC in violation of their fiduciary duty.

PARTIES

2. Plaintiff Thomas is a resident of the State of California and is a member of LA Exotics, LLC.

3. Thomas is informed and believes and thereon alleges that Defendant Maltin is an individual who is doing business in Los Angeles County and has one or more residences in Southern California. Maltin is a member of LA Exotics, LLC, and is a former director of Exotics.com, Inc.

4. Thomas is informed and believes and thereon alleges that Defendant Hastings is an individual who is doing business in Los Angeles County, who has one or more residences in Southern California and who was, until sometime in 2002, a resident of California. Hastings is a member of LA Exotics, LLC.

5. Defendant LA Exotics, LLC is a Georgia limited liability company doing business in Los Angeles County.

6. Defendants Maltin and Does 1 through 100 are collectively referred to herein as "Defendants."

7. The names and capacities of the Defendants sued as Does 1 through 100, inclusive, are unknown to Plaintiff. Plaintiff is informed and believes and thereon alleges

1 that Defendants, and each of them, were the agents, servants, employees, partners, co-
2 venturers, co-conspirators, and/or employers of each of the other Defendants, and each of
3 them, and in doing those acts herein referred to were acting within the course, purpose and
4 scope of their employment and/or agency, and/or has authorized, approved, consented to
5 or ratified the acts of such agents, servants, employees, and each other, and, as a result
6 thereof, Defendants and each of them are vicariously, jointly and severally liable for each
7 others' acts and omissions.

8 8. When Plaintiff ascertains the true identities and capacities of any of the
9 Defendants named as Does 1 through 100 herein, Plaintiff will seek leave of Court to
10 amend this Complaint accordingly.

11
12 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

13 Formation of LA Exotics, LCC ("LAE")

14 9. In March of 1997, Thomas and Maltin founded LA Exotics, LLC ("LAE"), a
15 Georgia limited liability company, for the specific purpose of publishing classified ads on
16 the internet related specifically to the Greater Los Angeles market. The ads targeted a
17 sophisticated, adult and urban audience, similar to those printed in such publications in the
18 *LA Weekly*. Once the office was opened and the business was up and running, Thomas
19 and Maltin brought in Hastings as a one-third equal partner. The Los Angeles office of
20 LA Exotics, LLC (www.laexotics.com) quickly became profitable. Thomas decided to
21 expand this business model into other cities, offering it to local entrepreneurs as a business
22 opportunity in other major U.S. markets. Maltin was directed to begin acquiring URLs in
23 anticipation of the expansion plans.

24
25 Formation of Exotics USA, LCC ("EUSA," Predecessor to Exotics Delaware)

26 10. In September of 1997, Thomas, Maltin and Hastings founded Exotics USA,
27 LLC, a Georgia limited liability company ("EUSA"), an entity envisioned as the umbrella
28

1 company for a series of similar operations throughout the U.S. and elsewhere. The
2 business plan called for acquiring "city name-exotics" URLs (e.g., sandiego-exotics.com;
3 vegas-exotics.com; miami-exotics.com, newyork-exotics.com, etc.). Each of these URLs
4 would be licensed to local operators in the respective cities, and EUSA would derive
5 license fees and related revenue. EUSA's ownership of the "city-exotics" URL was an
6 essential component of EUSA's business plan.

7 8 Acquisition of URLs by Maltin on EUSA's Behalf

9
10 11. A primary role of Maltin on behalf of and for the benefit of EUSA was to
11 acquire as many major city name-exotics URLs as possible. As each URL was registered,
12 using a boilerplate registration form, Maltin listed himself as the administrative contact,
13 with EUSA as the registered owner. EUSA paid for all of the URLs and the expenses
14 associated with registering them. If Maltin paid for any URLs or incurred any related
15 expenses, EUSA promptly reimbursed him. The address utilized for registration purposes
16 was EUSA's address. Once EUSA acquired all of the major U.S. cityname-exotics.com
17 URLs, it became Maltin's primary responsibility to interview candidates in each
18 expansion market and execute a license between EUSA and new local business owners.

19 12. The licenses signed by Maltin on behalf of EUSA specifically stated that the
20 licensor, EUSA, was the "owner of all right, title and interest in and to the URL". Maltin
21 executed approximately 25 licenses with identical language on behalf of EUSA.

22 13. In April of 1999, Thomas, Maltin and Hastings entered into a written
23 Settlement Agreement and Release to clarify their respective percentage ownerships in
24 each entity. Pursuant to that Settlement Agreement, Thomas and Maltin decreased their
25 respective ownership percentages in LAE from 33.3% to 25.5% respectively, and
26 Hastings' percentage ownership increased from 33.3% to 49%. Thomas and Maltin
27 collectively held 97%, and Hastings held 3% of EUSA. During the same period, LAE
28 entered into written standard licensing agreement with EUSA, which, like the other

1 licenses, specifically stated that the Licensor, EUSA, was the "owner of all right, title and
2 interest in and to the URL ..."

3
4 **Formation and Operation of Exotics.com, Inc. Delaware ("Exotics Delaware")**

5
6 14. In June of 1999, Red Rock, LLC, a Delaware limited liability company,
7 ("Red Rock") expressed an interest to invest approximately \$300,000.00 into EUSA. Red
8 Rock insisted on the formation of a new corporation. Thus, Exotics.com, Inc. a Delaware
9 corporation ("Exotics.Delaware") was formed, with Thomas, Maltin and Red Rock's
10 designee, namely Scott London ("London"), as its Board of Directors. All of EUSA's
11 assets were accordingly assigned to Exotics Delaware. EUSA's financial statements
12 provided to Red Rock pursuant to the transaction reflected expenses of nearly \$10,000.00
13 spent on URLs.

14 15. In November, 1999, Maltin arranged for a "bridge loan" for Exotics
15 Delaware. To induce the lender's loan, Maltin represented that the URLs were owned by
16 Exotics Delaware.

17 16. During the period between December 1999 and July 2000, London, through
18 a new company he was forming, was in the process of making an offer to buy a controlling
19 interest in Exotics Delaware. A letter of intent was submitted, and London retained an
20 attorney to perform "due diligence." During the due diligence process, London became
21 Chief Executive Officer of Exotics Delaware.

22 17. As acting CEO of Exotics Delaware, London instructed Maltin to work with
23 the attorneys to ensure that all of the business's URLs were registered in the name of
24 Exotics Delaware. At the time, there were still some URLs which showed LAE and/or
25 EUSA as the registered owners. By June of 2000, however, all URLs reflected Exotics
26 Delaware as the registered owner.

27 **Formation of Plaintiff Exotics Nevada**

28

1 18. In or about December 1999, St. George Capital Corp., a Canadian
2 corporation ("St. George"), entered into an agreement with Thomas and Maltin whereby
3 St. George would advance money to Exotics Delaware as necessary. This agreement was
4 predicated on Exotics Delaware owning the URLs which Maltin warranted both verbally
5 and in writing was the case. Thereafter, negotiations continued with St. George that
6 eventually led to the parties' agreement to merge Exotics Delaware with a new public
7 company, Exotics.com, Inc., a Nevada corporation ("Exotics Nevada").

8 19. On or about March 5, 2001, Exotics Delaware's board of directors ratified
9 the proposed merger of Exotics Delaware into Exotics. Nevada. Maltin voted for the
10 merger, and executed the merger agreement as an officer and director of Exotics Delaware.
11 Pursuant to that agreement, Exotics Nevada was required to, among other things, make a
12 capital investment into Exotics Delaware of \$2,000,000, and Exotics Delaware
13 represented, among other things, that Exotics Delaware had clear title to all of its assets,
14 tangible and intangible.

15 20. At this juncture, Maltin indicated that he wanted to be bought out of his
16 interest in the business. In May, 2001, Thomas agreed to purchase all of Maltin's shares
17 of Exotics Delaware for the sum of \$130,000.00, and a Settlement and Release Agreement
18 was thereafter executed on June 6, 2001. A true and correct copy of this Settlement and
19 Release Agreement is attached as Exhibit A and incorporated by this reference as if set
20 forth in full.

21 21. On or about June 13, 2001, Maltin resigned from Exotics Delaware.
22
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1 Maltin's Conversion of the URLs

2 22. On or about June 4, 2001, however, unbeknownst to either Thomas, Exotics
3 Delaware or Exotics Nevada, and without their consent or approval, Maltin had secretly
4 made himself the listed owner of the all of the URLs and changed the contact information
5 to reflect his own personal telephone number and personal e-mail address.

6 23. On or about September 8, 2001, Thomas and Exotics Delaware entered into
7 a 36 month Consulting Agreement. A true and correct copy of the Consulting Agreement
8 is attached as Exhibit B and is incorporated by this reference as if set forth in full.

9 24. On or about September 28, 2001, Maltin, once again without the consent or
10 approval of Thomas, Exotics Delaware or Exotics Nevada, adjusted the URLs' contact
11 information, removed all references to the Exotics businesses, and transferred all of the
12 URLs to a post office box address of Maltin's with his home telephone number and
13 personal e-mail address.

14 25. Maltin continues to hold a majority of the URLs in his own name. Further,
15 Maltin has, again without the consent or approval of Thomas Exotics Delaware, Exotics
16 Nevada or Thomas, purported to convey some of the URLs to the URLs' licensees,
17 including New York Exotics, Miami Exotics, Las Vegas Exotics and LA Exotics. As a
18 result, New York Exotics, Miami Exotics, Las Vegas Exotics, and LA Exotics have
19 refused to pay the required license fees to Exotics Delaware and Exotics Nevada.
20 Moreover, Maltin has approached Exotics.com, Inc. Delaware's other licensees, namely
21 San Diego-Exotics, Chicago Exotics, D.C. Exotics and San Francisco Exotics and offered
22 to sell them their city-URLs which would, in effect, allow them to buy out their licenses
23 and discontinue paying license fees to Exotics Delaware and Exotics Nevada.

24 26. Despite repeated demands to Maltin to turn over the URLs, Maltin has
25 refused. Thomas is informed and believes and thereon alleges that Maltin continues to
26 hold the URLs in his own name or has purportedly transferred them to licensees for his
27 personal profit.
28

1 FIRST CAUSE OF ACTION

2 (Conversion And Conspiracy - Against Maltin and Hastings)

3 27. Thomas incorporates by reference Paragraphs 1 through 26, inclusive, of this
4 Complaint, as though fully set forth in this place.

5 28. During April of 2001, and more so after his resignation from Exotics
6 Delaware in June of 2001, Maltin went to the Los Angeles office of LAE and began to run
7 the day-to-day operation of LAE's business due to health problems suffered by Hastings.
8 Thereafter, Thomas, who had received monthly profit distribution checks in the amount of
9 approximately \$8,000.00 over the previous 12 months, suddenly did not receive regular
10 checks. The monthly distribution checks became erratic, and his distribution amounts
11 dropped nearly 50%, to \$4,000 per month, and in some months to nothing at all. Thomas
12 made repeated attempts to obtain on-line banking information and monthly financials
13 rightfully due to him as a managing member of LAE, but Maltin, with Hastings'
14 knowledge and approval, refused to provide Thomas with the requested information and
15 continues to do so.

16 29. Thomas is informed and believes and thereon alleges that Maltin and
17 Hastings, in violation of their fiduciary duties to Thomas and for their own benefit,
18 reorganized LAE's distributions and converted them to salaries and consulting fees.

19 30. Thomas is the rightful owner of a fair share of LAE's monthly profit
20 distributions.

21 31. Maltin and Hastings have converted the LAE profits to their own use and for
22 their own benefit.

23 32. Thomas is informed and believes and thereon alleges that Does 1-100
24 conspired with Maltin and Hastings, and assisted in or ratified their actions in converting
25 the LAE profit distributions.

26 33. Thomas has demanded that Maltin and Hastings pay him his fair share of the
27 LAE profit distributions, but Maltin and Hastings have refused to comply.

28 34. Plaintiff is entitled to the return of his property and all proceeds and rights

1 pertaining to or derived from such property.

2 35. As a proximate result of Maltin's and Hastings' breach of fiduciary duty to
3 Thomas, Thomas has also suffered damages in an amount to be determined at trial.

4 36. Thomas is informed and believe that in doing the things alleged herein,
5 Defendants acted despicably, with malice, fraud and oppression, and with ill-will and
6 animus toward Thomas. Accordingly, Thomas seeks an award of punitive damages
7 against Defendants, and each of them, according to their respective wealth and financial
8 condition, in an amount sufficient to punish them and deter them from such misconduct in
9 the future.

10
11 SECOND CAUSE OF ACTION

12 (Breach of Fiduciary Duty And Conspiracy - Against Maltin and Hastings)

13 37. Thomas incorporates by reference Paragraphs 1 through 36, inclusive, of this
14 Complaint, as though fully set forth in this place.

15 38. As co-managing members of LAE along with Thomas, Maltin and Hastings
16 owed a fiduciary duty to Thomas and were required to perform their duties with utmost
17 loyalty and honesty, solely in the best interests of LAE and its members, and to refrain
18 from intentional misconduct and knowing violation of the law.

19 39. Maltin and Hastings breached their fiduciary duties to Thomas as set forth
20 above, by converting to their own use the valuable LAE profit distributions.

21 40. As a proximate result of Maltin's and Hastings' breach of fiduciary duties to
22 Thomas, Thomas has suffered damages in an amount to be determined at trial.

23 41. Thomas is informed and believes and thereon alleges that in doing the things
24 alleged herein, Defendants acted despicably, with malice, fraud and oppression, and with
25 ill-will and animus toward Thomas. Accordingly, Thomas seeks an award of punitive
26 damages against Defendants and each of them, according to their respective wealth and
27 financial condition, in an amount sufficient to punish them and deter them from such
28 misconduct in the future.

1 THIRD CAUSE OF ACTION

2 (Intentional Misrepresentation And Conspiracy - Against Maltin)

3 42. Thomas incorporates by reference Paragraphs 1 through 41, inclusive, of this
4 Complaint, as though fully set forth in this place.

5 43. Maltin made factual representations to Thomas that were knowingly false.

6 44. On or about June 6, 2001, Maltin executed a written Settlement and Release
7 Agreement, attached as Exhibit A, whereby Maltin purported to sell Thomas all of
8 Maltin's shares of Exotics Delaware for the sum of \$130,000.00. At the time of this
9 Agreement, Exotics Nevada had an agreement to acquire all of the assets of Exotics
10 Delaware by the merging of Exotics Delaware with Exotics Nevada, and this transaction
11 was predicated on Exotics Delaware owning the URLs. Pursuant to this merger, just as in
12 other transactions in the past in which Maltin had acted on behalf of Exotics Delaware,
13 Maltin warranted that Exotics Delaware had clear title to the business's URLs. Maltin
14 intentionally and maliciously falsely represented to Thomas, in purporting to sell Thomas
15 Maltin's interest in Exotics Delaware, and in expressly warranting that Maltin had not
16 theretofore made any assignments or transfers of released claims not otherwise excluded in
17 the June 6, 2001 sales agreement, that Exotics Delaware's assets, including the URLs,
18 were duly registered to and owned by Exotics Delaware.

19 45. When Maltin made these false representations of material fact, Maltin knew
20 them to be false, and made them with the intention of inducing Thomas to act in reliance
21 thereon.

22 46. Thomas actually and reasonably relied upon the misrepresentations made by
23 Maltin. Thomas would never have bought Maltin's interest in Exotics Delaware if he had
24 known that, just days earlier, Maltin had converted Exotics Delaware's primary assets, its
25 URLs, to Maltin's own use.

26 47. As a direct and proximate result of Maltin's acts of fraud and deceit, Thomas
27 has suffered damages in an amount according to proof at trial.

28 48. Thomas is informed and believes and thereon alleges that in doing the things

1 alleged herein, Defendants acted despicably, with malice, fraud and oppression, and with
2 ill-will and animus toward Thomas. Accordingly, Thomas seeks an award of punitive
3 damages against Defendants and each of them, according to their respective wealth and
4 financial condition, in an amount sufficient to punish them and deter them from such
5 misconduct in the future.

6
7 **FOURTH CAUSE OF ACTION**

8 **(Nondisclosure or Concealment And Conspiracy - Against Maltin)**

9 49. Thomas incorporates by reference Paragraphs 1 through 41, inclusive, of this
10 Complaint, as though fully set forth in this place.

11 50. On or about June 6, 2001, Maltin executed a written Settlement and Release
12 Agreement, attached as Exhibit A, whereby Maltin purported to sell Thomas all of
13 Maltin's shares of Exotics Delaware for the sum of \$130,000.00. At the time of this
14 Agreement, Exotics Nevada had an agreement to acquire all of the assets of Exotics
15 Delaware by the merging of Exotics Delaware with Exotics Nevada, and this transaction
16 was predicated on Exotics Delaware owning the URLs. Pursuant to this merger, just as in
17 other transactions in the past in which Maltin had acted on behalf of Exotics Delaware,
18 Maltin warranted that Exotics Delaware had clear title to the business's URLs. In the
19 Settlement and Release Agreement, Maltin expressly warranted that Maltin had not
20 theretofore made any assignments or transfers of released claims not otherwise excluded in
21 that June 6, 2001 agreement, but Maltin failed to reveal and suppressed the fact that he,
22 just days prior to executing the Settlement and Release Agreement, transferred and
23 converted ownership and control of the URLs to himself, which fact was known to Maltin
24 at all times. The suppression of the fact of Maltin's conversion of the URLs, and its
25 resulting devaluation of the consideration being conveyed in the transaction, was likely to
26 mislead Thomas and did in fact mislead Thomas in the light of the other representations
27 made by Maltin concerning Exotics Delaware's ownership of the URLs.

28 51. When Maltin made these false representations of material fact, Maltin knew

1 them to be false, and made them with the intention of inducing Thomas to act in reliance
2 thereon.

3 52. Thomas, at the time this failure to disclose and suppression of fact occurred,
4 and at the time Thomas took the actions alleged, was ignorant of the existence of the facts
5 which Maltin suppressed and failed to disclose. Thomas actually and reasonably relied on
6 the misrepresentations made by Maltin, and if Thomas had been aware of the existence of
7 the facts not disclosed by Maltin that, just days earlier, Maltin had converted Exotics
8 Delaware's primary assets, its URLs, to Maltin's own use, Thomas would not have bought
9 Maltin's interest in Exotics Delaware.

10 53. Thomas's reliance was justified because Maltin had repeatedly warranted
11 that Exotics Delaware's title to its URLs was clear, Maltin purported to be selling Thomas
12 his interest in Exotics Delaware, and there was no way Thomas could have known about
13 Maltin's conversion just days before the June 6, 2001 Settlement and Release Agreement
14 was entered into.

15 54. As a direct and proximate result of Maltin's acts of fraud and deceit, Thomas
16 has suffered damages including without limitation, a reduced value in Thomas's interest in
17 Exotics Delaware, in an amount according to proof at trial.

18 55. Thomas is informed and believes and thereon alleges that in doing the things
19 alleged herein, Defendants acted despicably, with malice, fraud and oppression, and with
20 ill-will and animus toward Thomas. Accordingly, Thomas seeks an award of punitive
21 damages against Defendants and each of them, according to their respective wealth and
22 financial condition, in an amount sufficient to punish them and deter them from such
23 misconduct in the future.

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1 FIFTH CAUSE OF ACTION

2 (Interference with Contract And Conspiracy -Against Matlin)

3 56. Thomas incorporated by reference Paragraphs 1 through 55, inclusive, of
4 this Complaint, as though fully set forth in this place.

5 57. Thomas has a contractual relationship with Exotics Delaware, as alleged.

6 58. Matlin's fraud, conversion, breaches, and other acts and omissions as alleged
7 have impaired Exotics Delaware's ability to perform its obligations to Thomas.

8 59. Thomas is informed and believes and thereon alleges that Matlin was and is
9 well aware of the existence and importance of this contractual relationship.

10 60. Thomas is informed and believes and thereon alleges that Defendants agreed
11 and conspired to interfere with Plaintiffs' advantageous contractual relationship.

12 61. Thomas is informed and believes and thereon alleges that Defendants have
13 intentionally and unlawfully interfered with this contractual relationship.

14 62. Thomas is informed and believes and thereon alleges that Defendants
15 intentionally interfered for the unlawful and improper purposes of starving the Exotics
16 business of revenue and appropriating it for themselves.

17 63. Thomas is informed and believes and thereon alleges that Matlin
18 intentionally interfered with Thomas's contractual relationship by improper means,
19 including unlawfully transferring rights or interests in URLs that do not belong to Matlin.

20 64. As a direct and proximate result of Defendants' interference, the contractual
21 relationships and advantages have been damaged or lost, and Thomas has suffered
22 damages including without limitation, lost consulting fees and a reduced value in
23 Thomas's interest in Exotics Delaware, in an amount to be proven at trial.

24 65. Thomas is informed and believes and thereon alleges that in doing the things
25 alleged herein, Defendant acted despicably, with malice, fraud and oppression, and with
26 ill-will and animus toward Thomas. Accordingly, Thomas seeks an award of punitive
27 damages against Defendants and each of them, according to their respective wealth and
28 financial condition, in an amount sufficient to punish them and deter them from such

1 misconduct in the future.

2
3 **SIXTH CAUSE OF ACTION**

4 **(Declaratory Relief- Against All Defendants)**

5 66. Thomas incorporates by reference Paragraphs 1 through 41, inclusive, of this
6 Complaint, as though fully set forth in this place.

7 67. Thomas contends that he is the rightful owners of a fair share of profit
8 distributions from LAE, and that Maltin and Hastings have no right to deprive Thomas of
9 the LLC's financial information and the LLC's profits.

10 68. Thomas is informed and believes and thereon alleges that Defendants
11 contend to the contrary.

12 69. Thomas is therefore entitled to declaratory relief, awarding him the right to
13 review the LLC financial information and to receive his fair share of the LLC profits, and
14 declaring any action taken by Maltin and Hastings that effect a re-structuring of the LLC
15 profit distributions to be null and void.

16
17 **SEVENTH CAUSE OF ACTION**

18 **(Breach of Contract - Against Maltin)**

19 70. Thomas incorporates by reference Paragraphs 1 through 55, inclusive, of this
20 Complaint, as though fully set forth in this place.

21 71. On or about June 6, 2001, Thomas and Maltin entered into a written
22 Settlement and Release Agreement, attached as Exhibit A, whereby Maltin purported to
23 sell Thomas all of Maltin's shares of Exotics Delaware for the sum of \$130,000.00. At the
24 time of this Agreement, Exotics Nevada had an agreement to acquire all of the assets of
25 Exotics Delaware by the merging of Exotics Delaware with Exotics Nevada, and this
26 transaction was predicated on Exotics Delaware owning the URLs. Pursuant to this
27 merger, just as in other transactions in the past in which Maltin had acted on behalf of
28 Exotics Delaware, Maltin warranted that Exotics Delaware had clear title to the business's

1 URLs. In the Settlement and Release Agreement, Maltin expressly warranted that Maltin
2 had not theretofore made any assignments or transfers of released claims not otherwise
3 excluded in that agreement.

4 72. Maltin breached the agreement, by, just days earlier, converting Exotics
5 Delaware's primary assets, its URLs, to Maltin's own use, and then conveying to Thomas
6 his interest in a company which he had just looted of its assets.

7 73. Thomas performed all terms, conditions, and acts required by him to be
8 performed under the agreement, except those acts excused by Maltin's breach or failure to
9 perform.

10 74. As a direct and proximate result of Maltin's breach, Thomas has suffered
11 damages in an amount according to proof at trial, including without limitation, for the
12 reduced value of Thomas's interest in a company whose assets have been converted.

13 75. Pursuant to the agreement, Thomas is entitled to reasonable attorneys' fees
14 and costs provides

15
16 **EIGHTH CAUSE OF ACTION**

17 **(Breach of the Implied Covenant of Good Faith and Fair Dealing – Against Maltin)**

18 76. Thomas incorporates by reference Paragraphs 1 through 55, and 71,
19 inclusive, of this Complaint, as though fully set forth in this place.

20 77. The Settlement and Release Agreement, attached as Exhibit A, contains an
21 implied covenant of good faith and fair dealing, such that neither party will do anything
22 deliberately to deprive the other of the benefits of the agreement.

23 78. Maltin breached this implied covenant, by, just days earlier, converting
24 Exotics Delaware's primary assets, its URLs, to Maltin's own use, and then conveying to
25 Thomas his interest in a company which he had just looted of its assets.

26 79. As a direct and proximate result of Maltin's breach, Thomas has suffered
27 damages in an amount according to proof at trial, including without limitation, for the
28 reduced value of Thomas's interest in a company whose assets have been converted.

1 80. Thomas is informed and believe that in doing the things alleged herein,
2 Maltin acted despicably, with malice, fraud and oppression, and with ill-will and animus
3 toward Thomas. Accordingly, Thomas seeks an award of punitive damages against Maltin
4 according to his wealth and financial condition, in an amount sufficient to punish him and
5 deter him from such misconduct in the future.

6
7 **NINTH CAUSE OF ACTION**

8 **(Accounting – Against All Defendants)**

9 81. Thomas incorporates by reference Paragraphs 1 through 41, inclusive, of this
10 Complaint, as though fully set forth in this place.

11 82. As a result of Maltin's and Hastings' acts of conversion and other breaches
12 of fiduciary duties as alleged above, Maltin, Hastings, and LAE have obtained possession
13 of funds which are the rightful property of Thomas.

14 83. Accordingly, Maltin, Hastings and LAE are obliged to account to Thomas
15 for all such funds and other rights over which they have had control.

16
17 **TENTH CAUSE OF ACTION**

18 **(Injunctive Relief– Against All Defendants)**

19 84. Thomas incorporates by reference Paragraphs 1 through 41, inclusive, of this
20 Complaint, as though fully set forth in this place.

21 85. Thomas is informed and believes and thereon alleges that, unless restrained
22 by this Court, Maltin and Hastings will continue to engage in acts of conversion , and in
23 particular will continue to convert Thomas's LAE profit distributions.

24 86. Thomas will suffer irreparable injury, because Thomas is informed and
25 believes and thereon alleges that Maltin and Hastings have attempted to sever LAE's
26 connection with Exotics Delaware, which jeopardizes LAE's fiscal health and continued
27 existence and exposes it to liability for its wrongful conduct with respect to its licensor.

28 87. There is imminent likelihood of further fraudulent conduct by Maltin and

1 Hastings, given their deceitful conversion and breaches of fiduciary duty and given
2 Maltin's wrongful conversion of the company's URLs and his subsequent attempts to sell
3 the URLs to the company's licensees as if they were his own property.

4 88. Accordingly, Thomas seeks temporary, preliminary and permanent
5 injunctive relief against Maltin, all other Defendants, and all persons acting in concert with
6 them, enjoining and restraining them from taking any act with respect to LAE's operations
7 which is inconsistent with Thomas's rights therein, and specifically enjoining all such
8 persons from transferring or diverting LAE's revenue and from selling or encumbering
9 LAE's tangible property while this litigation is pending, and mandatory injunctive relief
10 requiring Maltin and Hastings to account to and pay Thomas his rightful share of profit
11 distributions.

12
13 **ELEVENTH CAUSE OF ACTION**

14 **(Imposition of Constructive Trust – Against All Defendants)**

15 89. Thomas incorporates by reference Paragraphs 1 through 41, and 81 through
16 88, inclusive, of this Complaint, as though fully set forth in this place.

17 90. Maltin, Hastings, and LAE have acquired Thomas's rightful property by
18 Maltin's and Hastings' acts of fraud, conversion, breaches of fiduciary duty, and other
19 wrongful acts.

20 91. To prevent Defendants' unjust enrichment as a result of such wrongful acts,
21 a constructive trust should be imposed on Maltin's assets, Hastings's assets, and LAE's
22 assets, and those Defendants should be compelled to restore Thomas's property to him.

23
24 **TWELFTH CAUSE OF ACTION**

25 **(Appointment of Receiver – Against All Defendants)**

26 92. Thomas incorporates by reference Paragraphs 1 through 41, 81 through 91,
27 inclusive, of this Complaint, as though fully set forth in this place.

1 On the Fifth Cause of Action:

- 2 1. For damages in an amount according to proof at trial, in an amount in excess
3 of the jurisdictional minimum of Superior Court.
4 2. For exemplary damages.

5 On the Sixth Cause of Action:

- 6 1. For a declaratory judgment that Thomas is rightfully entitled to review the
7 LLC's books and records, that Thomas is entitled to receive his fair share of
8 the LLC profits, and that any action taken by Maltin and/or Hastings that
9 effects a re-structuring of the LLC profit distributions, or which otherwise is
10 in derogation of Thomas's rights, is null and void.

11 On the Seventh Cause of Action:

- 12 1. For compensatory damages in an amount according to proof at trial, in an
13 amount in excess of the jurisdictional minimum of Superior Court.
14 2. For reasonable attorneys' fees and costs.

15 On the Eighth Cause of Action:

- 16 1. For damages in an amount according to proof at trial, in an amount in excess
17 of the jurisdictional minimum of Superior Court.
18 2. For exemplary damages

19 On the Ninth Cause of Action:

- 20 1. For an accounting for all money and property, and all proceeds of the same,
21 which have been in the possession or control of Defendants.

22 On the Tenth Cause of Action:

- 23 1. For temporary, preliminary and permanent injunctive relief against
24 Defendants, and all persons acting in concert with them, enjoining and
25 restraining them from taking any act with respect to LAE's operations which
26 is inconsistent with Thomas's rights therein, and specifically enjoining all
27 such persons from transferring or diverting LAE's revenue and from selling
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or encumbering LAE's tangible property while this litigation is pending .

- 2. For mandatory injunctive relief requiring Defendants to account to and pay Thomas his rightful share of profit distributions.

On the Eleventh Cause of Action:

- 1. For imposition of a constructive trust on Maltin's assets, Hastings's assets, and LAE's assets.

On the Twelfth Cause of Action:

- 1. For appointment of a receiver instructed to take possession and control of LAE, to manage, control, care for, preserve and maintain LAE's assets and operations, to restore the fair profit distributions, and to maintain LAE's contractual relationship with Exotics Delaware.

On All Causes of Action:

- 1. For costs;
- 2. For reasonable attorney's fees; and,
- 3. For such and further relief as the Court may deem appropriate.

Dated: March 31, 2003

Respectfully submitted,
SIEGLER, KUBER & SEXTON, LLP

By: 
Adam Siegler

Attorneys for Plaintiff
GARY THOMAS aka GARY VOJTESAK

PROOF OF SERVICE

VIA U.S. MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California.

I am over the age of 18 and not a party to the within action; my business address is 9454 Wilshire Boulevard, Suite 201, Beverly Hills, California 90212.

On April 2, 2003, I served the foregoing document described as **FIRST AMENDED COMPLAINT** on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope(s) addressed as follows:

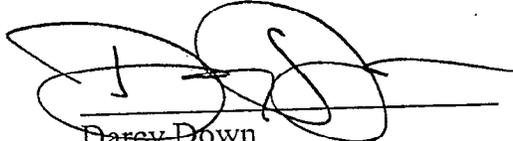
Bryan Freedman, Esq.
FREEDMAN & TAITELMAN, LLP
1901 Avenue of the Stars
Suite 500
Los Angeles, CA 90067

Sanford M. Ehrmann, Esq.
9606 Santa Monica Blvd.,
3rd. Floor
Beverly Hills, CA 90210-4420

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing, and I deposited the foregoing envelope(s) into the firm's mail collection system. Under that practice, it is deposited in the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 2, 2003 at Los Angeles, California.


Darcy Down

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/14/03

DEPT. 64

HONORABLE KENNETH R. FREEMAN

JUDGE

E. A. FAJARDO

DEPUTY CLERK

HONORABLE
F. LOPEZ, CRTRM. ASST.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

8:30 a

BC290511

Plaintiff

EXOTICS COM INC ET AL

Counsel

[NO APPEARANCES]

VS

Defendant

ANDREW MALTIN ET AL

Counsel

RELATED TO BC287853

NATURE OF PROCEEDINGS:

SIEGLER, KUBER & SEXTON
TAE-YOON KIM
9454 WILSHIRE BLVD., SUITE 201
BEVERLY HILLS CA 90212

1114

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/14/03

DEPT. 64

HONORABLE KENNETH R. FREEMAN

JUDGE

E. A. FAJARDO

DEPUTY CLERK

HONORABLE
M. LOPEZ, CRTRM. ASST.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

8:30 a

BC290511

Plaintiff

Counsel

EXOTICS COM INC ET AL

[NO APPEARANCES]

Defendant

Counsel

VS

ANDREW MALTIN ET AL

RELATED TO BC287853

NATURE OF PROCEEDINGS:

COURT'S ORDER RE: RELATED CASES

The Court finds that the following cases BC287853 and BC290511 are related cases within the meaning of Los Angeles Superior Court Local Rule 7.3(f).

For good cause shown, said cases are assigned to Judge KENNETH R. FREEMAN for all purposes.

The Case Management Conference set on 7/15/03 is advanced to this date and continued to 7/31/2003 at 8:30 a.m. in Department 64.

The matters set on 7/31/03 in Department 57 are advanced to this date and continued to 7/31/2003 at 8:30 a.m. in Department 64.

This order is made without prejudice to the parties making a motion to consolidate in the assigned department.

The moving party is ordered to serve notice of this order (including hearings vacated, if necessary) by mail forthwith on all interested parties within two (02) days of the receipt of this minute order. A copy of this minute order is sent via U.S. Mail in an envelope addressed as follows:

**Exotics.com (Delaware) Disclosure Letter
Pursuant to Section 5 of
the Share Purchase Agreement ("Agreement")
dated March 8, 2001**

Exotics.com, a Delaware corporation ("EX-DE") makes the following Exceptions to the representations and warranties contained in Section 5 of the Agreement. The paragraph references below correspond to the same paragraphs in the Agreement

Each exception set forth below shall be deemed notice of such exception for purposes of each paragraph of this Disclosure Letter even though it is not specifically stated in a specific paragraph as an exception. EX-DE's failure to specifically state an exception, which may be applicable in a specific paragraph below, shall not be deemed as a waiver or disclaimer of such exception.

- 5.1 **Organization of EX-DE; Authorization.** EX-DE is incorporated under the laws of the state of Delaware. The Agreement constitutes a valid and binding obligation of EX-DE enforceable against it in accordance with its terms except (i) as such enforceability may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally, (ii) as such obligations are subject to general principles of equity and (iii) as rights to indemnity may be limited by federal or state securities laws or by public policy.
- 5.2 **Capitalization.** The authorized capital stock of EX-DE consists of 100,000,000 shares of common stock, \$.0001 par value.
- 5.3 **No Conflict as to EX-DE.** The exception set forth in paragraph 5.18 is incorporated herein.
- 5.4 **Ownership of Delaware Shares.** EX-DE makes no representation or warranty that BX-NV's acquisition of record and beneficial ownership of 12,362,643 Delaware Shares, will be free and clear of all Encumbrances subject to applicable State and Federal securities laws on the basis that EX-DE no knowledge of any act or omission, or operation of law, on the part of its shareholders, that could create an Encumbrance.

EX-DE has granted the following options to acquire its shares:

1. Option granted to Red Rock, LLC to purchase up to 7.5% of EX-DE's issued and outstanding shares, on a fully diluted basis, as provided in the Option Agreement, a copy of which is attached as Exhibit "5.4-A" to this Disclosure Letter.
2. Warrants granted to E. Scott Crist and assigned to Venture Bridge to acquire approximately 250,000 warrants, as provided in a promissory note in the amount of \$100,000 and a Warrant Agreement with extensions, copies of which are attached as Exhibit "5.4-B-1" and "5.4-B-2" to this Disclosure Letter.
3. Options granted to employees of EX-DE pursuant to EX-DE's 1999 Incentive Stock Option Plan, as provided in Grant of Stock Option; and Stock Option Agreement, copies of which are attached as Exhibits "5.4-C-1" and "5.4-C-2"

4. Option granted to advisors Barry Pearlstein and Reza Karamooz, pursuant to EX-DE's 1999 Advisory Incentive Option plan, copies of which are attached as Exhibits "5.4-D-1" and "5.4-D-2" to this Disclosure Letter.

5. Option granted to Developers Dave Wooldridge and Tim Pavol, pursuant to EX-DE's 1999 Free Lance Design Incentive Option plan, copies of which are attached as Exhibits "5.4-E-1" and "5.4-E-2" to this Disclosure Letter.

- 5.5 *No Conflict as to EX-DE and Subsidiaries.* The exception set forth in paragraph 5.4 is incorporated herein. The exception set forth in paragraph 5.18 is incorporated herein.
- 5.6 *Consent and Approvals of Governmental Authorities.* The exception set forth in paragraph 5.18 is incorporated herein by reference.
- 5.7 *Other Consents.* All options agreements described in paragraph 5.4 above are excepted. EX-DE further excepts any notice requirements pursuant to the terms of any agreement or understanding between EX-DE and St. George Capital Group.
- 5.8 *Financial Statements.* EX-DE has delivered to EX-NV consolidated balance sheets of EX-DE and its Subsidiaries as at February 28, 2001.
- 5.9 *Title to Properties.* EX-DE was served with a complaint for Unlawful Detainer (Los Angeles County Municipal Court, Beverly Hills Branch) ("UD") for its premises at 8484 Wilshire Boulevard ("Premises"). The UD asserts, among other things: (a) possession of the Premises; (b) past due rent; and (c) costs incurred by the landlord in connection with the UD. EX-DE filed an Answer in the UD and the matter has been set for trial. EX-DE made a payment of certain expenses to landlord, in consideration of which, landlord agreed to continue the trial to March 16, 2001. If EX-DE is unable to reinstate its lease for the Premises, then landlord may assert, in addition to the UD, separate claims in a separate lawsuit, including, but not limited to breach of lease against EX-DE.
- 5.10 *Buildings, Plants and Equipment.* The exception set forth in paragraph 5.9 is incorporated herein by this reference.
- 5.11 *No Condemnation or Expropriation.* The exception set forth in paragraph 5.9 is incorporated herein by this reference.
- 5.12 *Litigation.* The exception set forth in paragraph 5.9 is incorporated herein by this reference. EX-DE received a copy of a threatened Complaint by Lea Hastings, who is a shareholder of EX-DE. A copy of the Complaint is attached hereto as Exhibit "5.12". EX-DE has been advised that Ms. Hastings has not filed the Complaint. EX-DE has not yet responded to the Complaint.
- 5.13 *Absence of Certain Changes.* In or about January 2001, EX-DE, in conjunction with two individuals formed EAWN, LLC, a California limited liability company. EX-DE owns a fifty percent (50%) membership interest in EAWN, LLC. The exception set forth in paragraph 5.9 is incorporated herein by reference. Any adjustment to EX-DE's capital structure, which was made pursuant to this Agreement, is hereby excepted. EX-DE received a \$5,000.00 pre payment of license fees from NY Exotics on March 5, 2001.
- 5.14 *No Material Adverse Change.* No exception.

- 5.15 *Contracts and Commitments.* The exception set forth in paragraph 5.18 is incorporated herein. EX-DE has Licensing Agreements with LA Exotics, NY Exotics, and London Exotics. Andrew Maltin and Gary Thomas collectively own fifty-one percent (51%) of LA Exotics. Scott London owns one hundred percent (100%) of NY Exotics and London Exotics. The exception set forth in paragraph 5.9 is incorporated herein by reference.
- 5.16 *Labor Relations.* No exceptions
- 5.17 *Employee Benefit Plans.* No exception.
- 5.18 *Compliance with Law.* All of the existing "Exotics" city sites entered into License Agreements for their respective use of the "Exotics" business model. EX-DE became aware that its offer of licenses may have constituted offers of franchises, which were subject to regulation by the Federal Trade Commission and the laws of the various states where "Exotics" city sites are located. Some jurisdictions, where city sites are located, require specific disclosure and procedural requirements in connection with the offer and sale of a franchise, including, but not limited to the delivery of a Uniform Franchise Offering Document to a prospective franchisee. EX-DE believes that its grant of licenses to use the "Exotics" business model did not comply with applicable franchise investment laws. EX-DE began taking steps to remedy its non-compliance with applicable franchise investment laws. However, due to lack of funding, those steps have not yet been implemented.
- EX-DE has not registered as a foreign corporation (Delaware) in the state of California. Under certain circumstances, a foreign corporation may become subject to certain provisions of California law pursuant to Section 2115 of the California Corporations Code. EX-DE may be subject to Section 2115.
- The exception set forth in paragraph 5.12 is incorporated herein by reference.
- 5.19 *Tax Matters.* As of March 5, 2001, EX-DE owed \$26,552.73 in back payroll taxes for 2001.
- 5.20 *Environmental Matters.* EX-DE excepts its use of common cleaning agents, and chemicals and products commonly associated with office supplies.
- 5.21 *Absence of Certain Commercial Practices.* EX-DE has retained St. George Capital Group to raise funds through the sale of EX-DE's securities. EX-DE excepts any transaction that relates to its agreement or relationship with St. George Capital Group.
- 5.22 *Transactions with Directors and Officers.* The exception set forth in paragraph 5.15 is incorporated herein.
- 5.23 *Borrowing and Guarantees.* The exception set forth in paragraph 5.21 is incorporated herein. The exceptions set forth in paragraph 5.4 and more specifically in Exhibits "5.4-B-1" and "5.4-B-2" are incorporated herein.
- 5.24 *Investment Purpose.* EX-DE is not transferring its shares pursuant to the Agreement. Accordingly, the representation and warranty contained in paragraph 5.24 is not applicable.

**Exotica.Com Supplemental Disclosure Letter
Pursuant to Section 5 of
the Share Purchase Agreement Dated July 10, 2001**

Exotica.com, a Delaware Corporation ("EX-DE" or the "Company") hereby discloses its Supplemental Exceptions to the Representations and Warranties contained in Section 5 of the Share Purchase Agreement dated July 10, 2001. EX-DE specifically incorporates its prior Disclosure of Exceptions to the Share Purchase Agreement dated March 8, 2001 ("Prior Exceptions"), as if fully set forth herein.

The paragraph references below correspond to the same paragraphs in the Agreement. Each Exception set forth below shall be deemed notice of such exception for the purposes of each paragraph of this Supplemental Disclosure Letter even though it is not specifically stated in a specific paragraph as an exception. EX-DE's failure to specifically state an exception, which may be applicable in a specific paragraph below, shall not be deemed as a waiver or disclaimer of such exception.

5.8 Financial Statements. The Company makes no representations regarding the Company's financial position since delivery of the Company's consolidated balance sheets as at February 28, 2001. Several of the Company's Licensees are delinquent in the payment of required monthly fees. The total amount of the delinquent accounts is approximately \$111,000. The Company has no immediate expectation of recovering these monies.

5.9 Title to Properties. In addition to the Prior Exceptions, EX-DE discloses that certain licensees (the "Dissenting Licensees") have informally alleged that they own, or have the right to control, the web sites for the specific geographical areas licensed to them for the purposes of advertising sales. The Company has not formally responded to the Dissenting Licensees. The Company further discloses that it has moved its Corporate Offices from 8484 Wilshire Boulevard to 209 Richmond, El Segundo, CA 90245. This move was necessitated because the Company could not meet its lease payments and was evicted from the Wilshire Boulevard premises. The Company is currently sharing offices space with one of its Licensees (LA Exotica).

5.10 Buildings, Plant and Equipment. The Exceptions set forth in paragraph 5.9 is incorporated herein. In addition, the Company was forced to move its web sites to a new collocation facility because the Company was behind in its collocation payments and was unable to make the required payments. The Company's web sites are now being hosted in Arizona with Quantum Leap Media, Inc.

5.11 No Condemnation or Expropriation. The Exceptions set forth in paragraph 5.9 is incorporated herein. In addition, the Company is a party to litigation over past, unpaid rent at its Wilshire Boulevard offices. The Company is also in arrears in its lease payments on its furniture and equipment and anticipates that the Lessors will take action in the immediate future to repossess the furniture and equipment.

5.14 No Material Adverse Change. The Exceptions set forth in paragraphs 5.9 through 5.12 are incorporated herein. In addition, the Company makes exception to this paragraph and specifically makes no representation that there has not been material adverse changes since the date of its last financial statements. Several vendors, including Federal Express, The Los Angeles Times, Quill Corporation, MCI Worldcom, Citicorp Vendor Finance, Worldwide/Monster.com and the New Time Los Angeles have sent past due accounts related to the Company to collection. These accounts total approximately \$23,000.

5.19 Tax Matters. As of July 1, 2001 the Company owes approximately \$80,000 in past due state and federal taxes, exclusive of interest and penalties. Interest and penalties on these past due obligations continue to accrue.

5.12 Litigation. The Exceptions set forth in paragraphs 5.9 through 5.11 are incorporated herein. In addition, the Company has been informed that several of the Company's Licensees have retained legal representation and are actively pursuing potential litigation against the Company of the Licensing Agreements. It is anticipated that any such litigation may involve claims over the rights transferred pursuant to the Licensing Agreements, claims that the Company has violated the terms of the Licensing Agreements, and claims that the Company has violated the Federal Trade Commission regulations, the laws of the various states and the Uniform Franchise Act. The Company has not retained counsel to advise it concerning these potential claims because of lack of funds.

One of the Company's minority shareholders, Red Rock, L.L.C., has stated in a letter to the Company that it objects to any corporate transaction. The letter further implies that Red Rock may initiate litigation related to the proposed merger or any other transaction. The Company has not retained counsel related to the Red Rock letter, but has retained counsel to advise it concerning this transaction.

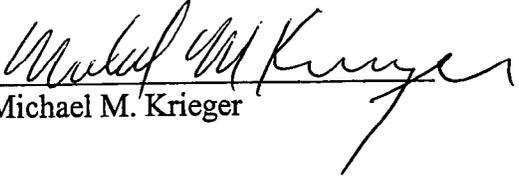
5.14 No Material Adverse Change. The Exceptions set forth in paragraphs 5.9 through 5.12 are incorporated herein. In addition, the Company makes exception to this paragraph and specifically makes no representation that there has not been material adverse changes since the date of its last financial statements. Several vendors, including Federal Express, The Los Angeles Times, Quill Corporation, MCI Worldcom, Citicorp Vendor Finance, Worldwide/Monster.com and the New Time Los Angeles have sent past due accounts related to the Company to collection. These accounts total approximately \$23,000.

5.19 Tax Matters. As of July 1, 2001 the Company owes approximately \$80,000 in past due state and federal taxes, exclusive of interest and penalties. Interest and penalties on these past due obligations continue to accrue.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this **Respondent's Opposition to Motion for Summary Judgment and Brief in Support Thereof; Motion to Extend Time Under Rule 56(f); Exhibit List and Exhibits** is being served on Petitioner by deposit with the United States Postal Service on December 4, 2003, as first class mail in an envelope addressed to:

Jenkins & Gilchrist
Attn: Cathryn A. Berryman
1445 Ross Avenue, Suite 3200
Dallas TX 75202-2799



Michael M. Krieger

