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Facsimile: 213-612-2499 1 2 3 4 kgoss@orrick.com 5 Attorneys for Plaintiff 6 TEB CĂPITAL MANAGEMENT, LLC 7 UNITED STATES DISTRICT COURT 8 CENTRAL DISTRICT OF CALIFORNIA 9 7436 JFW (RE) WESTERN DIVISION 10 11 Case No. TEB CAPITAL MANAGEMENT, LLC, a 12 Massachusetts limited liability corporation, COMPLAINT; JURY DEMAND 13 Plaintiff, False Endorsement Under 1. 14 The Federal Lanham Act ٧. 15 Violation of Statutory Rights YAHOO!, INC., a California corporation, 2. of Publicity Defendant. Violation of Common Law 3. 17 Rights of Publicity 18 Unjust Enrichment 4. 20 INTRODUCTION 21 This action is brought by TEB Capital Management, LLC, the 22 owner of the publicity and endorsement rights to the likeness, image and identity of 23 Tom Brady. Tom Brady is the starting quarterback for the New England Patriots 24 who led his team to 3 Super Bowl championships. This action is brought against 25 Yahoo, Inc! for its knowing and intentional unauthorized use of Tom Brady's 26 likeness, image and identity in its advertisements and promotions for Yahoo's 27 Fantasy Football program. 28 COMPLAINT: JURY DEMAND OHS West:260127034.1

THE PARTIES

- 2. Plaintiff TEB Capital Management, LLC (hereinafter "Plaintiff" or "TEB") is a Massachusetts limited liability company with its principal place of business in Massachusetts. Plaintiff is the owner and manager of the likeness and image of Tom Brady.
- 3. Upon information and belief, Plaintiff alleges that defendant Yahoo!, Inc. is a California corporation with its principal place of business in California. Upon information and belief, Plaintiff alleges that Defendant Yahoo!, Inc. (hereinafter "Yahoo" or "Defendant") conducts business in this District and has offices in this District.

JURISDICTION AND VENUE

- 4. This is an action for false designation of origin and false endorsement pursuant to Section 43 of the federal Lanham Act, 15 U.S.C. § 1125, violation of statutory and common law rights of publicity, and unjust enrichment.
- 5. This Court has original jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331.
- 6. This Court also has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332.
- 7. This Court has supplemental jurisdiction over the state claims pursuant to 28 U.S.C. § 1367.
- 8. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because defendant is doing business in this district, the claims arose in this district and defendant's wrongful acts occurred in this district.

BACKGROUND AND GENERAL ALLEGATIONS

Tom Brady's Likeness and Image

9. Tom Brady is the starting quarterback for the New England Patriots. Tom Brady, Number 12, has led the Patriots to three Super Bowl

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Championships. Tom Brady is the youngest quarterback in NFL history to start and win three Super Bowls.

- 10. Tom Brady has also earned two Super Bowl MVP awards (Pete Rozelle Awards) and has been selected for three Pro Bowls. Tom Brady was named *Sports Illustrated's* NFL Player of the Year in 2004 and was named *Sports Illustrated's* Sportsman of the Year in 2005.
- 11. Tom Brady's name, image, likeness and identity are widely known and recognized and he has become a worldwide celebrity. While he has become famous for his prowess as an NFL quarterback, his fame is not limited to the world of sports. In 2005, Tom Brady hosted *Saturday Night Live*.
- 12. TEB owns the rights to Tom Brady's likeness and image by assignment. TEB actively manages Tom Brady's likeness and image with respect to rights of publicity and endorsements.

Defendant Yahoo!, Inc.'s Wrongful Use of Tom Brady's Likeness and Image

- 13. Defendant Yahoo runs a well-known internet service company offering multiple goods and services mostly through its internet websites, including Yahoo Fantasy Football products and services.
- 14. Fantasy Football is a fantasy sports game in which individuals can purchase fantasy teams and compete with other participants. Each team scores points based on the performance of real-life NFL football players during the football season.
- 15. Upon information and belief, Plaintiff alleges that Fantasy Football is big business, especially for internet service companies. Upon information and belief, Fantasy Football is a \$4 billion industry with over 8 million consumers; and the industry continues to grow every year. Upon information and belief, Plaintiff alleges that Fantasy Football is the most popular fantasy sport in the United States.

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- 16. Upon information and belief, Plaintiff alleges that defendant Yahoo's Fantasy Football website was the most popular Fantasy Football website, with 4.4 million unique users last year. Upon information and belief, Yahoo's Fantasy Football website generates over 800 million page views per month during the Fantasy Football season.
- 17. In addition to the page views of Yahoo's Fantasy Football website, Plaintiff alleges upon information and belief, that visitors to Yahoo's Fantasy Football website also view other Yahoo web pages generating millions more page views (and consequently, more revenue) for Yahoo.
- advertisement for its Fantasy Football goods and services in *Sports Illustrated* featuring Tom Brady's likeness, image and identity without permission or authority. The advertisement ran in the September 4, 2006 "NFL Preview" edition of *Sports Illustrated* and prominently features Tom Brady's image and jersey number. Tom Brady is featured in the top center of the photograph. A true and correct copy of the *Sports Illustrated* advertisement is attached hereto as Exhibit "A."
- 19. Upon information and belief, Plaintiff alleges that Yahoo! used Tom Brady's likeness, image and identity, without permission or authorization, to advertise Fantasy Football goods and services in other editions of *Sports Illustrated* as well as other sports magazines and publications.
- 20. Also during this time period, Yahoo ran an advertisement web banner on its Yahoo! Sports webpages, again featuring Tom Brady's likeness, image and identity without permission or authority.
- 21. At the time Yahoo ran these advertisements and promotions it knew that it did not have authority or permission to use Tom Brady's likeness, image or identity. Despite this knowledge, Yahoo intentionally and willfully used Tom Brady's likeness, image and identity to advertise and promote its Fantasy Football website and services for the 2006 football season.

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COUNT 1

False Endorsement Under The Federal Lanham Act - 15 U.S.C. § 1125 et seq.

- 22. Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 21, above.
- 23. Plaintiff has the rights to Tom Brady's likeness, image and identity with respect to commercial endorsements and rights of publicity.
- 24. Defendant has used the image, likeness and identity of Tom Brady in its advertisements for its Fantasy Football services and products without authorization or permission.
- 25. Defendant's unauthorized use of the image, likeness and identity of Tom Brady in its Fantasy Football advertisements and promotions constitute a false endorsement and false designation of origin in violation of Section 43(a) of the federal Lanham Act.
- 26. Defendant's unauthorized use of Tom Brady's image, likeness and identity are false and misleading and tend to falsely describe and represent that Defendant's goods and services are licensed, sponsored, endorsed or otherwise authorized by Tom Brady. Defendant's unauthorized use of Tom Brady's image, likeness and identity in its advertisements and promotional material for Yahoo's Fantasy Football goods and services also represents by implication that Tom Brady endorses, sponsors or is otherwise affiliated with Yahoo's Fantasy Football program.
- 27. Defendant's unauthorized use of Tom Brady's image, likeness and identity is likely to cause confusion or mistake and to deceive consumers as to the endorsement, sponsorship, affiliation, connection or association of Tom Brady with Defendant's Fantasy Football services and products.
- 28. As a direct and proximate result of Defendant's wrongful actions, Plaintiff has suffered damages in an amount to be proven at trial, but in excess of the jurisdictional minimum.

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29. Plaintiff further alleges upon information and belief that Defendant's unauthorized use of Tom Brady's likeness, image and identity will continue unless and until Defendant is enjoined. Plaintiff has no adequate remedy at law to prevent Defendant from continuing to wrongfully violate Plaintiff's rights and Plaintiff will suffer irreparable harm unless Defendant is enjoined from continuing its wrongful conduct.

COUNT 2

Violation of Statutory Right of Publicity - Cal. Civ. Code § 3344.1

- 30. Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 21, above.
- 31. As discussed above, Defendant knowingly used, and upon information and belief continues to use, Tom Brady's likeness, image and identity in its advertisements and promotions for its Fantasy Football program without permission or authority thereby violating Plaintiff's statutory rights of publicity.
- 32. As a direct and proximate result of Defendant's actions, Plaintiff has been harmed in an amount to be proven at trial, but in excess of the jurisdictional minimum.
- Defendant's unauthorized use of Tom Brady's likeness, image and identity will continue unless and until Defendant is enjoined. Plaintiff has no adequate remedy at law to prevent Defendant from continuing to wrongfully violate Plaintiff's rights and Plaintiff will suffer irreparable harm unless Defendant is enjoined from continuing its wrongful conduct.
- 34. Defendant's violation of Plaintiff's rights of publicity was intentional, deliberate, willful and malicious. Accordingly, Plaintiff is entitled to recover punitive and exemplary damages from Defendant.

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COUNT 3

Violation of Common Law Right of Publicity

- 35. Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 21, above.
- 36. As discussed above, Defendant's unauthorized use of Tom Brady's likeness, image and identity in its advertisements and promotions for its Fantasy Football program violate Plaintiff's common law rights of publicity.
- 37. As a direct and proximate result of Defendant's actions, Plaintiff has been harmed in an amount to be proven at trial, but in excess of the jurisdictional minimum.
- 38. Plaintiff has no adequate remedy at law to prevent Defendant from continuing to wrongfully violate Plaintiff's rights and Plaintiff will suffer irreparable harm unless Defendant is enjoined from continuing its wrongful conduct.
- 39. Defendant's violation of Plaintiff's rights of publicity was intentional, deliberate, willful and malicious. Accordingly, Plaintiff is entitled to recover punitive and exemplary damages from Defendant.

COUNT 4

Unjust Enrichment

- 40. Plaintiff hereby realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 21, above.
- 41. As alleged herein, Defendant has used and, upon information and belief, continues to use the likeness, image and identity of Tom Brady without permission or authorization.
- 42. Accordingly, Defendant has been unjustly enriched and it is inequitable to allow Defendant to retain this benefit without just compensation.

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1	WHEREFORE, Plaintin prays for judgment against Defendant as
2	follows:
3	1. For a preliminary and permanent injunction enjoining
4	Defendant, and all persons acting in concert or participation with it, from using,
5	without proper authorization or permission, the likeness, image or identity of Tom
6	Brady in connection with advertisements and promotional material for its Fantasy
7	Football products and services;
8	For compensatory damages in an amount to be proven at trial;
9	 For an accounting of all gross revenues and profits received,
10	directly and indirectly, by Defendant as a result of the unauthorized use of
11	Plaintiff's likeness, image and identity;
12	4. For restitution in an amount to be proven at trial;
13	For punitive damages;
14	For reasonable attorneys' fees;
15	7. For costs;
16	8. For such further relief as the Court deems proper.
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18	Dated: November <u>Lo</u> , 2006 KENT B. GOSS VALERIEM. GOO
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