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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 MANWIN LICENSING INTERNATIONAL)
S.A.R.L., a Luxembourg limited liability)
14 company (s.à.r.l.) and DIGITAL PLAY-)
GROUND, INC., a California corporation,)

15 Plaintiffs,

16 vs.

17 ICM REGISTRY, LLC, d/b/a .XXX, a)
Delaware limited liability corporation;)
18 INTERNET CORPORATION FOR)
ASSIGNED NAMES AND NUMBERS, a)
19 California nonprofit public benefit)
corporation; and Does 1-10,)

20 Defendants.

21 ICM REGISTRY, LLC, d/b/a .XXX, a)
22 Delaware limited liability corporation,)

23 Counterclaimant,

24 vs.

25 MANWIN LICENSING INTERNATIONAL)
S.A.R.L., a Luxembourg limited liability)
26 company (s.à.r.l.); DIGITAL PLAY-)
GROUND, INC., a California corporation,)
27 and Does 11-20,)

28 Counterdefendants.)

CASE NO. CV 11-9514-PSG
(JCGx)

Honorable Philip S. Gutierrez

**COUNTERCLAIMS OF
ICM REGISTRY, LLC, d/b/a
.XXX**

DEMAND FOR JURY TRIAL

1 **COUNTERCLAIMS**

2 Counterclaimant ICM Registry, LLC (“ICM” or “Counterclaimant”) for its
3 counterclaims against Counterdefendants Manwin Licensing International
4 S.A.R.L. (“Manwin”), Digital Playground, Inc. (“Digital Playground”) and Does
5 11-20 (collectively “Counterdefendants”) alleges the following:

6 **I. PARTIES AND JURISDICTION**

7 1. ICM is informed and believes that Manwin is a Luxembourg limited
8 liability company with its principal place of business in the city of Luxembourg,
9 Luxembourg.

10 2. ICM is informed and believes that Digital Playground is a California
11 corporation with its principal place of business in Van Nuys, California.

12 3. Counterdefendants Manwin and Digital Playground have submitted to
13 the jurisdiction of this Court by commencing their action for antitrust violations in
14 this judicial district, as set forth in the First Amended Complaint (“FAC”).

15 4. ICM is a Delaware limited liability company, with its principal place
16 of business in Palm Beach Gardens, Florida.

17 5. ICM is unaware of the true names or capacities of the
18 counterdefendants sued under the fictitious names Does 11 through 20, inclusive.
19 ICM is informed and believes that Does 11 through 20, and each of them, either
20 participated in performing the acts averred in these counterclaims or were acting as
21 the agent, principal, alter ego, employee, or representative of those who
22 participated in the acts averred in these counterclaims. Accordingly,
23 counterdefendants Does 11 through 20 are each liable for all acts averred in these
24 counterclaims. ICM will amend these counterclaims to state the true names of
25 counterdefendants Does 11 through 20 if and when their identity is discovered.

26 6. Jurisdiction of these counterclaims arise under the Sherman Act, 15
27 U.S.C. §§ 1 and 2, *et seq.* and under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, as
28 well as the Business and Professions Code (“B&PC”) of the State of California,

1 specifically the Cartwright Act, B&PC § 16700, *et seq.*, and unfair competition
2 under B&PC § 17000. Subject matter jurisdiction is conferred on this Court by 28
3 U.S.C. §§ 1331, and under the principles of supplemental jurisdiction, 28 U.S.C.
4 § 1367(a), with respect to the common law and state counterclaims. Jurisdiction of
5 the third party claims is also proper under 28 U.S.C. § 1367(a).

6 7. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and
7 15 U.S.C. §22 in that: (a) Counterdefendants Manwin and Digital Playground may
8 be found and transact business in this judicial district and are subject to personal
9 jurisdiction in this judicial district; and (b) a substantial part of the acts, omissions
10 and events giving rise to the claims asserted in this complaint occurred in this
11 judicial district.

12 **II. INTRODUCTION**

13 8. Manwin and Digital Playground have correctly characterized the
14 dispute between the parties as an antitrust dispute, but have mischaracterized who is
15 engaged in the wrongful anti-competitive conduct at issue. At its core, this case
16 does not involve a monopoly over defensive or affirmative .XXX domain name
17 registrations, but instead involves control over the platforms on and through which
18 the online adult entertainment industry advertises and disseminates its content.
19 Manwin has dominance over these platforms and sees the emergence of the .XXX
20 TLD as a threat to its current monopoly and market power. When Manwin was
21 unable to buy into .XXX, it sought to thwart it altogether. It colluded and conspired
22 with Digital Playground (one of the top five porn studios) to destroy ICM's
23 commercialization of .XXX because the .XXX TLD poses a potential threat to
24 Manwin's dominance. Counterdefendants' entire course of conduct, therefore,
25 including the filing and prosecution of their First Amended Complaint, is an
26 illegitimate and illegal attempt to maintain a monopoly and market power.

27 9. Because of Manwin's current dominance in search and access to
28 online adult entertainment, purveyors of mainstream adult entertainment content

1 are forced to advertise and release their content through Manwin’s platforms.
2 Even well-known and established parties in the adult entertainment industry, such
3 as Playboy Enterprises, Inc. (“Playboy”), have been forced to work through
4 Manwin given the stranglehold that Manwin currently has on the online adult
5 entertainment market. Manwin has created its monopoly and market power by
6 acquiring and controlling certain major adult entertainment “tube sites” which
7 generally disseminate adult entertainment online for free. By doing so, it
8 maintains dominance over some of the most highly trafficked online adult
9 entertainment platforms in the industry. The reason that market share in the “tube
10 sites” affects market share in the online adult entertainment market is complex and
11 warrants some explanation and a brief history of the dissemination of adult
12 entertainment online.

13 **III. FACTUAL BACKGROUND**

14 **A. Manwin’s Market Dominance**

15 10. Manwin’s dominance in the adult entertainment industry is a result of
16 the paradigm shift that has taken place in the online adult entertainment industry.

17 11. When adult entertainment first emerged on the Internet in the 1990s, it
18 was relatively simple to watch and lucrative to sell. With very little expense,
19 anyone could put up a web page featuring a list of links to other adult-
20 entertainment websites. If an Internet surfer clicked on one of the links, he or she
21 would be directed to a pay site; the pay site would pay the referring site (an
22 “affiliate”) a tiny amount for the traffic, and a more substantial amount if the surfer
23 ultimately subscribed to the site. The pay sites would supply affiliates with content
24 snapshots and clips for free. In this way, the online adult entertainment industry
25 came to consist of a relatively small number of pay sites surrounded by many
26 thousands of affiliates.

27 12. After the launch of YouTube in 2005, an entirely new platform for
28 disseminating adult entertainment emerged, namely, the “tube” sites. Sites such as

1 YouPorn, PornoTube and RedTube emerged. Like YouTube, the porn tubes were
2 flooded with free content, some of it licensed, but much of it pirated from paid
3 sites. YouPorn, in particular, obtained market dominance through the uploading of
4 copyright infringing material to its site by its employees and/or contractors.

5 13. The tube sites had a new business model. They made most of their
6 money by maintaining traffic on their sites and selling banner ads. Consumers
7 migrated *en masse* from the old affiliate sites to free movies on tube sites. Tube
8 sites became the primary feeder of traffic for adult content sites. The tube sites fed
9 traffic through banner ads, embedded links, pop-ups, pop-unders and other
10 methods while also maintaining traffic on their own sites.

11 14. Today, the online internet traffic for adult entertainment is
12 concentrated in the tube sites. Sites like Pornhub, Xvideos, YouPorn, and Tube8
13 attract more users than popular sites such as TMZ and the Wall Street Journal, and
14 are the top adult entertainment websites on the web.

15 15. Recognizing this trend, in 2011 Manwin purchased YouPorn.com.
16 Manwin also owns xTube.com, Pornhub.com, Extreme Tube and Spankwire and is
17 reported to operate and/or control other “tube” sites that offer free user-generated
18 and searchable adult content. Manwin recognized that these new platforms were
19 the wave of the future and it could dominate access to online adult entertainment
20 by controlling them; Manwin could reap advertising revenue from the tube sites
21 *and* use these sites to funnel surfers to the paid sites it controlled or to other paid
22 sites from whom it received kick-backs.

23 16. Manwin recognized that the true value of these “tube sites” was not
24 the revenue generated by them but the traffic to them. Since the content on these
25 sites was given away for free, the tube sites in and of themselves were not a huge
26 moneymaker. The money to be made from these sites was from the traffic and
27 from controlling the stream of traffic.

28

1 17. In 2010, Manwin had purchased the adult entertainment production
2 company Brazzers (which owns approximately 30 pornographic websites) and now
3 had a conduit to further monetize this asset. While many in the online adult
4 entertainment industry saw the “tube sites” as the death of adult entertainment
5 (since the tube sites gave away what had traditionally been paid for), Manwin
6 sought to use the tube sites to establish a monopoly by controlling the search and
7 access to adult entertainment. Manwin purchased many of the major tube sites in
8 an attempt to establish a monopoly and market power over access to online adult
9 entertainment. Manwin’s tube site Youporn.com is ranked #2 among adult
10 entertainment sites and is the top ranked tube site on the web as ranked by
11 Alexa.com.

12 **B. Unveiling of .XXX TLD Threatens Competition to Manwin**
13 **Empire**

14 18. The approval of the .XXX TLD by ICANN and the approval of ICM
15 as the registry operator of the .XXX TLD was a change to the adult entertainment
16 industry that threatened Manwin’s empire. The commercialization of .XXX would
17 undoubtedly lead to the unveiling of a multitude of new tube sites that would
18 threaten Manwin’s dominance over the tube site market. These tube sites would
19 include the .XXX TLD which may put them higher in a query of web search
20 results for explicit sexual content. This would lead to greater exposure for .XXX
21 tube sites as opposed to .COM tube sites. This would undoubtedly effect
22 Manwin’s dominance in the tube site market and the overall market for online
23 adult entertainment.

24 19. If .XXX was successfully launched, the lack of .XXX in the URL of
25 Manwin’s tube sites could result in a loss of search engine traffic to these tube
26 sites. In the fall of 2010, Manwin’s managing partner expressed these concerns to
27 Greg Dumas (“Dumas”) and Claudio Menegatti (“Menegatti”), both ICM
28 consultants. Specifically, Manwin was concerned that .XXX would endanger

1 Manwin's traffic by impacting Manwin's search engine results allowing .XXX
2 registrants to legitimately obtain Manwin's traffic. Thus, Manwin saw the launch
3 of .XXX as a serious threat to Manwin's tube site empire.

4 20. For this reason, Manwin's managing partner, in July 2010, attempted
5 to buy into ICM. Moreover, Manwin sought to woo ICM by stating that if Manwin
6 joined .XXX it would make .XXX a success because everything Manwin does
7 becomes the industry leading activity. When the attempt by Manwin's managing
8 partner to buy into ICM was rebuffed, he resorted to instigating legal action by and
9 through Manwin in order to prevent ICM from commercializing the .XXX TLD.
10 Digital Playground's involvement in the suit is likely attributable to Manwin's
11 influence since Manwin appears to have been negotiating the acquisition of Digital
12 Playground prior to initiating this suit and acquired Digital Playground shortly
13 thereafter. It was reported in gfy.com, an online adult industry bulletin board, that
14 Manwin's managing partner stated that "although it will be hard to stop .XXX
15 completely, maybe we can make it highly unprofitable for them." The timing of
16 Manwin's and Digital Playground's lawsuit is indicative of the true intent of
17 Manwin and Digital Playground to interfere with ICM's prospective business since
18 it occurred just a few weeks before the launch of .XXX. Manwin's and Digital
19 Playground's suit was making good on Manwin's threat to Dumas and Menegatti
20 (at a meeting in 2010) and to ICM executives (during business negotiations in
21 2011) that Manwin would sue ICM to "mess them up."

22 21. On information and belief, Manwin and Digital Playground have
23 colluded to file this lawsuit to delay and/or prevent the commercialization of .XXX
24 by ICM in order to maintain Manwin's current monopoly over search and access to
25 online adult entertainment.

26 22. On information and belief, Manwin's acquisition of co-plaintiff
27 Digital Playground after the initiation of this litigation was in furtherance of its
28

1 improper purpose of maintaining its monopoly and market power and as part of its
2 illegal scheme to restrain trade.

3 23. Manwin alleges in its Complaint herein that this case involves
4 “supracompetitive” pricing of .XXX TLDS detrimental to the adult entertainment
5 domain name market. However, during ICM’s “Sunrise A” period, (the period in
6 which ICM allowed trademark holders and domain name holders in the adult
7 entertainment industry to apply for advanced registration of a .XXX domain
8 name), ICM offered .XXX domains for an application fee of \$162 with annual fees
9 of \$62. Though these prices may be higher than the current registration prices for
10 a .COM domain name, ICM’s registration price is actually less than the \$100
11 annual registration fee paid for .COM domain names when they were initially sold
12 back in 1995. Moreover, ICM’s annual registration fees are also less than the
13 .JOBS annual registration fee, which is approximately \$125 and the .TRAVEL
14 annual registration fee, which is between \$85 and \$100; both .JOBS and
15 .TRAVEL were approved by ICANN in the same 2004 sTLD round in which
16 .XXX was approved.

17 24. It is important to note that the price of a .XXX TLD reflects the
18 boutique market to which .XXX caters, and the costs necessary to cater to that
19 market. Ten dollars of each resolving registration goes to support the .XXX
20 sponsoring organization. Other amounts go to pay for daily malware scans,
21 member verification and other costs unique to both this market and ICM’s unique
22 service offerings.

23 25. The pricing for .XXX TLDs was also designed to combat the
24 cybersquatting that is rampant in the .COM universe and that destroys fair
25 competition. Rather than having to register hundreds of domain names in order to
26 prevent cybersquatting, the .XXX TLD system was designed so that trademark
27 owners would only need to seek registrations for the names they intended to use.
28

1 26. To achieve this, ICM priced its .XXX TLDs at such a level that
2 cybersquatters would be discouraged from applying for multiple domain names,
3 thereby protecting the intellectual property rights interests of the legitimate owner.
4 ICM Registry believes that its price point encourages competition because it is at a
5 level that is not price-prohibitive but still discourages illegitimate consumers from
6 buying up names.

7 27. Thus, this case does not involve “supracompetitive pricing” as
8 Manwin and Digital Playground suggest, but rather involves internet traffic and hit
9 counts and the potential drop in hit counts to Manwin’s tube sites. Manwin claims
10 to have 60 million hits on its online adult entertainment platforms daily. Should
11 non-Manwin “tube” sites such as tube.xxx, freesexmovies.xxx and others appear
12 on .XXX, this number may drop precipitously and with it, Manwin’s monopoly
13 income and dominance over access to online adult entertainment. That is
14 Manwin’s motivation for suing.

15 **C. Manwin’s Anti-Competitive and Unlawful Conduct**

16 28. For the reasons set forth above, Manwin has utilized its monopoly
17 power and market power to inhibit the commercialization of the .XXX TLD, and
18 engaged in predatory acts to prevent and coerce others in the adult entertainment
19 industry from utilizing the .XXX TLD platform.

20 29. On information and belief, Manwin has used its monopoly power and
21 its market power to attempt to improperly extort concessions from ICM, namely,
22 (1) a price reduction for .XXX domain names of \$10 per domain name; (2)
23 registration of exact matches and typos of Manwin’s existing trademarks and
24 domain names in .XXX for free; (3) assurance that neither ICM nor the
25 International Foundation for Online Responsibility (“IFFOR”), as the sponsoring
26 organization for the .XXX TLD, would introduce registry policies that would limit
27 or prevent tube sites from existing in .XXX; and (4) a commitment from Stuart
28 Lawley, ICM’s CEO, that he would step down as chair of IFFOR.

1 30. Manwin sought to establish a revenue split approximately between
2 80/20 and 70/30 of profits acquired from running certain premium .XXX domains
3 (such as search.xxx) from ICM by leveraging Manwin's market power.

4 31. On information and belief, Manwin has and continues to engage in
5 "tying" arrangements with webmasters, conditioning promotion of the webmasters
6 websites on Manwin's tube sites on the webmasters' boycotting use of .XXX and
7 has secured agreement, either express or implied, that the webmasters will not do
8 business with .XXX.

9 32. On information and belief, Manwin pulled advertising and video clips
10 submitted to Manwin's tube sites by the owners of orgasms.xxx and casting.xxx
11 because the content was from a .XXX site; this led to the loss of substantial
12 revenue to these .XXX site owners and damaged ICM's relationship with these site
13 owners.

14 33. On information and belief, Manwin has improperly attempted to
15 destroy competition to its tube sites by requiring that ICM grant it certain premium
16 or high value tube site names such as "tube.xxx" at below market prices and has
17 indicated that failure to comply would result in litigation being instituted against
18 ICM.

19 34. On information and belief, Manwin has attempted to prevent
20 webmasters with whom it works from doing business with .XXX by reserving the
21 right under the terms and conditions of its website agreements to reduce or cease
22 payment to these parties if they register certain domain names, URLs or paid ad
23 schemes with .XXX. Manwin has secured agreement from these webmasters,
24 either express or implied, that they will not do business with .XXX.

25 35. Manwin has engaged in unfair anticompetitive practices by
26 demanding that ICM allocate it several thousand domain names either at below
27 market prices or for free, as well as ensure that ICM's and/or IFFOR's policies
28 would not prohibit tube sites on .XXX.

1 36. On information and belief, Manwin has instigated a boycott of .XXX
2 by refusing to advertise, promote or host content for companies, individuals or
3 groups that use .XXX.

4 37. On information and belief, Manwin has publicly and privately
5 denounced the .XXX TLD in the adult entertainment industry and engaged in an
6 unfair and anticompetitive campaign against ICM in order to prevent ICM from
7 commercializing .XXX and to interfere with ICM's existing and prospective
8 contractual relationships.

9 38. On information and belief, Manwin interfered with ICM's sponsor-
10 ship of the X Rated Critics Association ("XRCO") Award Show in 2012 by
11 encouraging the wholesale boycott by companies, performers and participants if
12 ICM were permitted to participate in order to destroy ICM's ability to market and
13 commercialize .XXX. Manwin has secured agreement, either express or implied,
14 that XRCO will not do business with .XXX.

15 39. On information and belief, Manwin has utilized its dominance in the
16 adult entertainment industry to encourage the wholesale boycott of .XXX TLD in
17 the industry in order to destroy any competition that may arise from
18 commercialization of .XXX and has secured agreement, either express or implied,
19 by those within the industry that they will not do business with .XXX .

20 40. On information and belief, Manwin improperly interfered with ICM's
21 potential sponsorships of Adult Video News ("AVN") and XBIZ's adult industry
22 events and interfered with advertising opportunities with AVN and XBIZ in order
23 to destroy any competition that may arise from commercialization of .XXX and
24 has secured agreement, either express or implied, by AVN and XBIZ that they will
25 not do business with .XXX. This coercion constitutes a wrongful restraint of trade
26 because it unfairly prohibits ICM from marketing and promoting its goods in the
27 stream of commerce.

28

1 41. On information and belief, Manwin has coerced industry groups into
2 blocking the promotion of .XXX by ICM through sponsorship of industry events.
3 This coercion constitutes a wrongful restraint of trade because it unfairly prohibits
4 ICM Registry from marketing and promoting its goods in the relevant streams of
5 commerce.

6 42. On information and belief, Manwin has coerced .XXX spokesmodels
7 to end relationships with ICM, insinuating that their revenue generating
8 relationships with Manwin would be impacted by their involvement with .XXX.
9 Manwin has secured agreement, either express or implied, that they will not do
10 business with .XXX.. This coercion constitutes a wrongful restraint of trade
11 because it unfairly prohibits ICM from marketing and promoting its goods in the
12 stream of commerce.

13 43. On information and belief, Manwin has conditioned contracts with
14 third parties on their non-involvement with the .XXX TLD. These contracts
15 constitute improper agreements in restraint of trade.

16 44. Manwin has engaged in libel and trade defamation by publishing to
17 third parties via press release false statements that ICANN and ICM have engaged
18 in an illegal scheme to eliminate competitive bidding and market restraints in
19 violation of federal and state unfair competition laws.

20 45. On information and belief, Manwin asserted that it plans on
21 maintaining its monopoly or market power by starting its own adult industry trade
22 group consisting of two or three more “powerhouses” in the industry (without
23 inclusion of smaller webmasters) in order to maintain its monopoly or market
24 power and control of the adult entertainment industry.

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1 **First Counterclaim for Combination or Conspiracy in Restraint of Trade**

2 **Under Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1**

3 **(Against All Counterdefendants)**

4 46. ICM repeats and re-alleges each and every allegation set forth above.

5 47. This is a counterclaim under Section 1 of the Sherman Antitrust Act,
6 15 U.S.C. § 1.

7 48. For purposes of this claim, the relevant product market consists of
8 online search and access to adult entertainment. Other relevant product markets
9 may also exist.

10 49. The relevant geographic markets are global.

11 50. Manwin has market power over online adult entertainment tube sites.
12 Manwin has colluded with at least, Digital Playground, and their related
13 companies, affiliates, brands and certain third party affiliates to prevent the
14 emergence of other tube sites through improper means in order to protect its
15 dominance in the relevant market or markets as alleged herein.

16 51. Manwin, Digital Playground, and their related companies, affiliates,
17 brands, and certain third party affiliates have conspired to boycott the .XXX TLD
18 and have coerced and/or encouraged the boycott of .XXX websites by third parties
19 in order to maintain a monopoly over the relevant market or markets as alleged
20 herein.

21 52. Manwin, Digital Playground, and their related companies, affiliates,
22 brands, and certain third party affiliates have intended to restrain trade in the
23 product market mentioned above through inhibiting commercialization and
24 utilization of the .XXX TLD.

25 53. Plaintiffs are informed and believe that Manwin and Digital Play-
26 ground have combined and conspired to undertake at least the following anti-
27 competitive practices intended to restrain trade in the relevant market or markets
28 mentioned above:

1 (a) Engaging in improper “tying” arrangements with webmasters in
2 which said Counterdefendants condition the promotion of the webmasters websites
3 on Manwin’s tube sites on a boycott of the .XXX TLD;

4 (b) Instigating a boycott of .XXX and refusing to advertise, promote or
5 host content for companies, individuals or groups that use .XXX;

6 (c) Engaging in harassment and coercion to extort high value tube site
7 names such as “tube.xxx” for below market prices;

8 (d) Demanding that ICM allocate it several thousand domain names at
9 below market prices and requiring assurances that neither ICM’s nor IFFOR’s
10 registry policies would introduce any policies that limited or prevented tube sites
11 from existing in .XXX;

12 (e) Improperly coercing industry groups into blocking the promotion of
13 .XXX at adult entertainment events and gatherings in an attempt to improperly
14 restrain the trade of ICM;

15 (f) Conditioning contracts with third parties on non-involvement with the
16 .XXX TLD; and

17 (g) Engaging in an unfair anticompetitive campaign against .XXX in
18 order to prevent ICM from bringing .XXX to market.

19 54. Manwin has conspired and combined with Digital Playground, a
20 leading content provider, to maintain Manwin’s monopoly or market power (and
21 Digital Playground’s visibility) by harassing, oppressing, boycotting and
22 interfering with ICM Registry’s commercialization of .XXX.

23 55. Manwin’s and Digital Playground’s conspiracy to restrain trade in the
24 relevant market has had, and unless enjoined will continue to have, the effect of
25 harming the competitive process in interstate commerce and will result in actual
26 injury to competition.

27 56. If not enjoined, Manwin’s and Digital Playground’s restraint of trade
28 will continue and result in existing and potential competitors being excluded from

1 competing in the relevant market resulting in higher prices for the “tied goods” (i.e.
2 online adult entertainment content) and poorer quality product options within the
3 relevant market.

4 57. Manwin’s and Digital Playground’s conspiracy and combinations
5 have caused, and unless enjoined will continue to cause, injury to ICM since they
6 will unlawfully prevent ICM from commercializing the .XXX TLD. This harm
7 will also destroy or damage competition by preventing Internet stakeholders from
8 competing with Manwin’s tube sites, and may result in higher prices and fees to
9 end consumers and lower quality goods.

10 **Second Counterclaim for Monopolization Under Section 2 of**
11 **the Sherman Antitrust Act, 15 U.S.C. § 2**
12 **(Against All Counterdefendants)**

13 58. ICM repeats and re-alleges each and every allegation set forth above.

14 59. This is a counterclaim under Section 2 of the Sherman Antitrust Act,
15 15 U.S.C. § 2.

16 60. For purposes of this claim, the relevant product market consists of
17 online search and access to adult entertainment. Other relevant markets may also
18 exist.

19 61. The relevant geographic market is global.

20 62. By engaging in the above activities, Manwin and Digital Playground
21 have improperly restrained trade, harmed competition and engaged in predatory
22 conduct in the above listed product market to the detriment of business and
23 consumers in violation of Section 2 of the Sherman Antitrust Act.

24 63. The actions stated above have inhibited and continue to inhibit ICM
25 from competing in the relevant market and unless enjoined, will prevent ICM from
26 commercializing the .XXX TLD.

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1 **Third Counterclaim for Attempted Monopolization Under**
2 **Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2**
3 **(Against Manwin)**

4 64. ICM repeats and re-alleges each and every allegation set forth above.

5 65. This is a counterclaim under Section 2 of the Sherman Antitrust Act,
6 15 U.S.C. § 2.

7 66. For purposes of this claim, the relevant product market consists of
8 online search and access to adult entertainment. Other relevant markets may also
9 exist.

10 67. The relevant geographic markets are global.

11 68. By engaging in the predatory conduct mentioned above, Manwin had
12 the specific intent to control the price that it and others paid for .XXX TLDs.
13 Moreover, it also had the intent to destroy competition by usurping control over
14 ICM Registry policies.

15 69. If not enjoined, there is a high likelihood that Manwin's
16 monopolization over the relevant markets will continue to the exclusion of existing
17 and potential competitors giving Manwin unfettered discretion to fix prices, refuse
18 to deal and restrain trade.

19 **Fourth Counterclaim for Conspiracy to Monopolize**
20 **Under Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2**
21 **(Against All Counterdefendants)**

22 70. ICM repeats and re-alleges each and every allegation set forth above.

23 71. This is a counterclaim under Section 2 of the Sherman Antitrust Act,
24 15 U.S.C. § 2.

25 72. For purposes of this claim, the relevant product market consists of
26 online search and access to adult entertainment. Other relevant markets may also
27 exist.

28 73. The relevant geographic markets are global.

1 74. The combination or conspiracy between Manwin, Digital Playground
2 and their related companies, affiliates, brands, and certain third party affiliates was
3 undertaken with the specific intent of maintaining Manwin's tube site market
4 power.

5 75. The overt acts mentioned above were done with the specific intent to
6 monopolize the relevant market and to prevent commercialization of .XXX which
7 would prevent ICM from competing in the relevant market.

8 76. The unlawful conspiracy of Manwin, Digital Playground and their
9 related companies, affiliates, brands and certain third party affiliates has caused
10 and, unless enjoined by this Court, will continue to cause adverse and anti-
11 competitive injury to ICM, to consumers and to the business and property of adult
12 content stakeholders and to .XXX applicants, webmasters and others in the adult
13 entertainment community.

14 **Fifth Counterclaim for Conspiracy in Restraint of Trade**
15 **Under the Cartwright Act**
16 **(Against All Counterdefendants)**

17 77. ICM repeats and re-alleges each and every allegation set forth above.

18 78. This is a counterclaim under the Cartwright Act, California Business
19 and Professions Code Sections 16720 *et seq.*

20 79. For purposes of this claim, the relevant product market consists of
21 online search and access to adult entertainment. Other relevant markets may also
22 exist.

23 80. The relevant geographic markets are global.

24 81. Manwin has acted in concert with at least Digital Playground, and
25 their related companies, affiliates, brands, and network of webmasters to boycott
26 the .XXX TLD, and have engaged in predatory anti-competitive acts as discussed
27 above in violation of the Cartwright Act.

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1 89. Manwin has engaged in libel and trade defamation, including without
2 limitation a libelous press release about this very lawsuit in which Manwin's
3 (false) allegations were reported as facts, intended to interfere with ICM's existing
4 and prospective business relationships.

5 90. Such actions constitute unfair competition in violation of Section
6 43(a) of the Lanham Act because they are designed to drive a legitimate market
7 participant out of the market by improper means.

8 91. Counterdefendants' acts complained of herein have damaged and will
9 continue to damage Counterclaimant irreparably.

10 92. Counterclaimant is therefore entitled to an injunction restraining and
11 enjoining Counterdefendants from further acts of unfair competition.

12 **Seventh Counterclaim for Unfair Competition**

13 **Under California Business & Professions Code § 17200**

14 **(Against All Counterdefendants)**

15 93. ICM repeats and re-alleges each and every allegation set forth above.

16 94. This is a counterclaim for unfair competition under California
17 Business and Professions Code § 17200.

18 95. Counterdefendants' actions violate California unfair competition laws
19 since they are intended to drive out and prevent competition in order to reap
20 monopoly rewards.

21 96. Moreover, Counterdefendants commenced this action without a good
22 faith basis for believing that Counterclaimant had engaged in wrongful anti-
23 competitive conduct and instead for the sole purpose of hindering the
24 commercialization of the .XXX TLD in order to maintain improper and unlawful
25 control over online adult entertainment platforms, specifically tube sites.

26 97. Upon information and belief, Counterdefendants commenced this
27 action to illegally interfere with Counterclaimant's existing and prospective
28 business relationships.

1 98. Counterdefendants undertook these acts to drive out and prevent
2 competition from ICM's clients in order to reap monopoly rewards.

3 99. Counterdefendants' acts as herein alleged present clear and
4 convincing evidence of oppression and malice, under California Civil Code
5 Section 3294

6 100. Counterdefendants' acts complained of herein have damaged and will
7 continue to damage Counterclaimant irreparably and constitute unfair competition
8 under California Business and Professions Code § 17200 *et seq.*

9 101. ICM is therefore entitled to an injunction restraining and enjoining
10 Counterdefendants from further acts of unfair competition.

11 **Eighth Counterclaim for Tortious Interference With Prospective**

12 **Economic Advantage**

13 **(Against Manwin)**

14 102. ICM repeats and re-alleges each and every allegation set forth above.

15 103. This is a claim for tortious interference with prospective economic
16 advantage.

17 104. As part of its .XXX Founders Program and Sunrise A reservation
18 period, ICM offered members of the adult entertainment industry the ability to
19 secure and develop .XXX domain names and apply for advanced registration of
20 .XXX domains in exchange for a registration fee.

21 105. In response to these offerings, members of the adult entertainment
22 industry expressed their intention to enter agreements and/or did enter into
23 agreements with ICM, including .XXX Founder Premium Domain Name
24 Licensing Fees Contracts and .XXX Premium Generic Names Contracts, for
25 registration of .XXX domains.

26 106. For example, ICM entered into registration agreements with Really
27 Useful, Ltd., the registrant for the domain names orgasms.xxx and casting.xxx.
28

1 Under its contracts with this registrant, ICM was to receive a series of payments in
2 exchange for reservation of those domains.

3 107. In addition to the contracts for the orgasms.xxx and casting.xxx
4 domains, Really Useful, Ltd. intended to enter into additional premium name
5 contracts with ICM for other .XXX domains.

6 108. Manwin had knowledge of ICM's offering of domain name
7 registration to the members of the adult entertainment industry and ICM's
8 agreements obtained from this offering based on various public announcements,
9 including ICM's announcement on the successful conclusion of its .XXX Founders
10 Program, which included the orgasms.xxx and casting.xxx domains.

11 109. On information and belief, Manwin had knowledge of adult
12 entertainment industry members' intention to apply for registration of .XXX
13 domains based on communications with those members and/or Internet
14 publications expressing these members' intention to apply for registration.

15 110. On information and belief, Manwin intended to disrupt the economic
16 relationship between ICM and these industry members who intended to apply for
17 .XXX registrations by indicating that Manwin would not take video uploads, links,
18 sites or ads from .XXX sites.

19 111. The actions of Manwin disrupted the relationship ICM had with these
20 industry members who intended to apply for .XXX registrations. Manwin's
21 actions deterred these parties from purchasing .XXX domain names because their
22 ability to monetize such domain names would be greatly inhibited by Manwin's
23 boycott. These parties decided to forego their applications to register .XXX
24 domain names with ICM as a result of Manwin's actions. Certain of these parties
25 also lost revenue as a direct result of Manwin's boycott of their content and
26 advertising and consequently were forced to seek deferral of payment to ICM for
27 the generic .XXX domain names they had acquired.

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1 112. ICM has suffered economic harm as a direct result of Manwin's
2 activities because ICM has been deprived of revenue from .XXX domain
3 registrations from adult entertainment industry members who had otherwise
4 expressed their intention to apply for registrations. ICM has also suffered
5 economic harm by being deprived of prompt full payment under its existing .XXX
6 generic names contracts with parties who have lost revenue as a direct result of
7 Manwin's boycott of their content and advertising.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Counterclaimant prays for judgment against
10 Counterdefendants, and each of them, as follows:

11 1. Judgment on each and all of its counterclaims for:

- 12 a. actual damages, general and special no less than \$40 million;
- 13 b. consequential damages;
- 14 c. punitive and/or exemplary damages in an amount to be
15 determined at trial, which would punish and deter such further
16 conduct by Counterdefendants; and
- 17 d. treble damages, according to proof.

18 2. Enjoining and restraining Counterdefendants, from, in any manner,
19 directly or indirectly, maintaining or renewing anticompetitive contracts or any
20 concert of action aimed at boycotting the adoption, use, commercialization,
21 development, promotion, marketing or advertising of the .XXX TLD, and from
22 adopting any practice, plan, program, or design having a similar purpose or effect.

23 3. Awarding Counterclaimant its costs and reasonable attorneys' fees
24 incurred in this action.

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4. For such other relief as the Court may deem just and proper.

Dated: September 28, 2012

Respectfully submitted,
GORDON & REES LLP



by

Richard P. Sybert
Hazel Mae B. Pangan
Attorneys for Defendant and
Counterclaimant
ICM REGISTRY, LLC

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, ICM Registry, LLC hereby demands a trial by jury on all issues so triable.

Dated: September 28, 2012

Respectfully submitted,
GORDON & REES LLP

by 

Richard P. Sybert
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ICM REGISTRY, LLC