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14 and ORA MEDIA LLC

15 **UNITED STATES DISTRICT COURT**  
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

17 LARRY KING ENTERPRISES, INC.,  
18 a Virginia Corporation, and ORA  
19 MEDIA LLC, a Delaware Limited  
20 Liability Company,

21 Plaintiffs,

22 v.

23 NATHANIEL "NATE" HOLZAPFEL,  
24 an individual, and NATE HOLZAPFEL  
25 LLC, a Utah Limited Liability  
26 Company,

27 Defendants.

Case No.: 2:18-cv-9454

**COMPLAINT FOR:**

- (1) **FALSE DESIGNATION OF ORIGIN UNDER THE LANHAM ACT (15 U.S.C. § 1125(a) *et seq.*);**
- (2) **TRADEMARK INFRINGEMENT UNDER CALIFORNIA COMMON LAW;**
- (3) **UNFAIR COMPETITION UNDER CALIFORNIA COMMON LAW;**
- (4) **VIOLATION OF THE CALIFORNIA COMMON LAW RIGHT OF PUBLICITY; AND**
- (5) **VIOLATION OF THE CALIFORNIA STATUTORY RIGHT OF PUBLICITY (CAL. CIV. CODE. § 3334).**

DEMAND FOR JURY TRIAL

1 Plaintiffs Larry King Enterprises, Inc. (“LKE”) and Ora Media LLC  
2 (“ORA”), for their Complaint against defendants Nathaniel “Nate” Holzapfel and  
3 Nate Holzapfel LLC (“Defendants”) allege as follows:

4 **SUMMARY OF ACTION**

5 1. Defendants used false pretenses to obtain Larry King’s participation in  
6 a mock interview, then infringed Plaintiffs’ common law trademarks and rights of  
7 publicity to make it appear that Larry King endorsed Defendants’ commercial  
8 activities when, in fact, he has not done so. Plaintiffs seek injunctive relief to stop  
9 Defendants’ infringing conduct and compensatory and punitive damages for the  
10 harm their actions have caused.

11 **JURISDICTION AND VENUE**

12 2. This is a civil action arising under the trademark laws of the United  
13 States and the statutory and common laws of the State of California. This Court  
14 therefore has federal question jurisdiction over this action pursuant to 15 U.S.C. §  
15 1121, 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a), as well as supplemental  
16 jurisdiction over the state law claims asserted herein. Since there is a complete  
17 diversity of the parties and the amount in dispute exceeds \$75,000 as described more  
18 fully below, there also is diversity jurisdiction pursuant to 28 U.S.C. § 1332(a).

19 3. Venue is proper in this district under 28 U.S.C. §§ 1391(b) in that, *inter*  
20 *alia*, Plaintiffs and Defendants may be found in this district and a substantial portion  
21 of the events described took place in this district.

22 **THE PARTIES**

23 4. Plaintiff LKE is, and at all times mentioned herein was, a Virginia  
24 corporation with its principal place of business in Newton, Massachusetts.

25 5. Plaintiff ORA is, and all times mentioned herein was, a Delaware  
26 limited liability company with its principal place of business in New York, New  
27 York.

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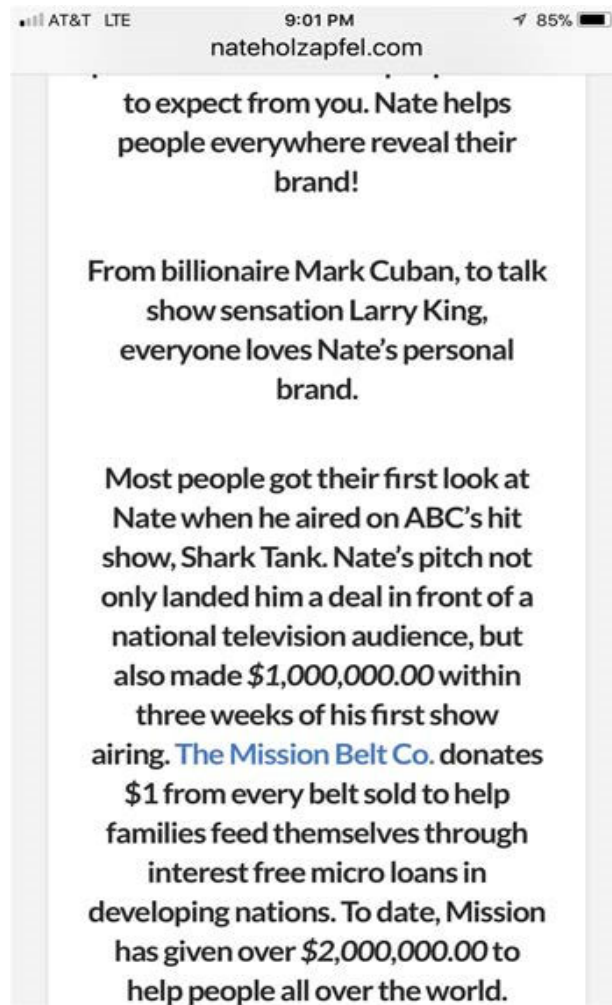


1 Larry King taken from the Mock Interview to make it appear that Holzapfel  
2 appeared on *Larry King Now* when he in fact did not do so, and to depict Holzapfel  
3 in a flattering manner. Those videos uniformly include the statement Mr. King  
4 made during the Mock Interview (to cover an incomprehensible statement Holzapfel  
5 made) that “You’re selling me on laughing.” Together those videos have been  
6 viewed over 65,000 times by members of the public. See  
7 <https://www.youtube.com/watch?v=JCKjXdhpILQ&feature=youtu.be>;  
8 <https://www.youtube.com/watch?v=7TqTaEGmN1Q>; and  
9 [https://www.youtube.com/watch?v=ts\\_NEor94r4](https://www.youtube.com/watch?v=ts_NEor94r4).

10 16. Defendants falsely stated on their “www.natestateofmind” and/or  
11 “nateholzapel.com” websites that “Larry King...loves Nate’s personal brand,”  
12 something Larry King did not and never would say, to falsely imply that Larry King  
13 endorsed Defendants and to otherwise promote Defendants and their services, see:

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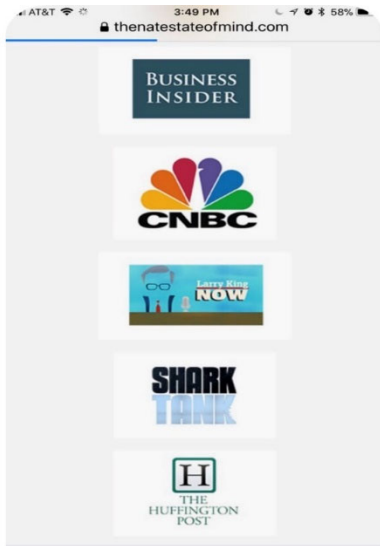
17. Defendants also combined an image of Larry King from the Mock Interview with a statement Defendants falsely attribute to him that “Nate Holzapfel is one of the best interviews I have ever had,” something Mr. King never said and never would say, and posted it on their “www.natestateofmind” and/or “natehozafel.com” websites to make it falsely appear that Larry King had endorsed Defendants and to promote Defendants’ products and services, see:



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18. Defendants also used the logo of ORA’s *Larry King Now* television program on their “www.natestateofmind” and/or “nateholzapfel.com” websites to falsely imply that Holzapfel had appeared on that program, when in fact he has never done so, see:



19. All of Defendants’ actions as described above are completely unauthorized by Plaintiffs, and are calculated to mislead the public into believing that Larry King endorses Defendants and their services when he has not done so.



1 Further, Defendant's misconduct is intentional. Upon learning that Plaintiffs  
2 objected to their wrongful actions as described above, Defendants removed from  
3 their "www.natestateofmind" and/or "natehozapfel.com" websites the statements  
4 described above in an attempt to eliminate evidence of their misconduct. However,  
5 although Plaintiffs have demanded that Defendants cease and desist all such  
6 wrongful activities in writing, Defendants have ignored those demands and failed to  
7 stop any of the other wrongful activities described above in response to Plaintiff's  
8 written demands. Defendants continue to use the name and image of Larry King,  
9 copyrighted images and clips of Larry King, and statements falsely attributed to  
10 Larry King in their electronic press kit, on YouTube, and elsewhere to falsely imply  
11 Mr. King's endorsement and promote themselves and their services, making  
12 necessary the present legal action.

13 20. Defendants' wrongful actions as described above have caused Plaintiffs  
14 to suffer irreparable injuries, and dilute the value of Mr. King's endorsement  
15 services. Defendants misuse of LKE and ORA's intellectual property to promote  
16 themselves in their services damages the goodwill associated with Larry King and  
17 violates LKE's and ORA's rights in numerous ways.

18 **FIRST CLAIM FOR RELIEF**  
19 **(False Designation of Origin Under the Lanham Act, 15 U.S.C. § 1125(a) *et. seq.***  
20 **by Plaintiffs Against All Defendants)**

21 21. Plaintiffs reallege and incorporate by reference all of the preceding  
22 paragraphs.

23 22. Larry King's name and likeness, ORA's *Larry King Now* logo, are  
24 inherently distinctive and, to a significant portion of the consuming public, have  
25 come to identify the source of the professional and endorsement services Mr. King  
26 has licensed to LKE and ORA, and which LKE and ORA license to the public.  
27 Plaintiffs own and enjoys common law trademark rights in said marks under federal  
28 law, which rights are superior to any rights that Defendant may claim in and to those  
trademarks with respect to Defendants' products, services, and commercial

1 activities. Plaintiffs' marks are inherently distinctive and have acquired secondary  
2 meaning with the trade and consuming public, and/or have become distinctive in the  
3 minds of customers, in that Plaintiffs' marks are associated with Plaintiffs or  
4 Plaintiffs' licensor Larry King and the unique services he provides.

5       23. Defendants have, without Mr. King's, LKE's or ORA's permission,  
6 misappropriated Mr. King's name and likeness and combined that name and  
7 likeness with statements falsely attributed to him, and have used ORA's *Larry King*  
8 *Now* logo, to mislead and confuse the public into believing that Mr. King approves  
9 of, endorses, or is otherwise associated with Defendants and their services and  
10 commercial activities, when in fact neither Mr. King, LKE, nor ORA approve of,  
11 endorse, or are in any way associated with Defendants or their services or  
12 commercial activities. Defendants' actions as described above are likely and will  
13 continue to cause confusion or mistake or to deceive as to the origin, sponsorship, or  
14 approval of Defendant, their products, services and commercial activities by or with  
15 Plaintiffs, and thus constitute common law trademark infringement, false  
16 designation of origin, passing off, and unfair competition in violation of Section  
17 43(a)(1)(A) of the Lanham Act, 15 U.S.C. 11 § 1125(a)(1 )(A).

18       24. Defendants' misconduct as described above is intentional. As a  
19 proximate result of said actions, Plaintiffs have suffered, are suffering, and will  
20 continue to suffer, irreparable injury to their rights, and have suffered, and will  
21 continue to suffer, substantial loss of goodwill and loss in the value of Plaintiffs'  
22 common law marks, unless and until Defendants are enjoined from continuing their  
23 wrongful acts.

24       25. Plaintiffs are entitled to the range of relief provided by 15 U.S.C. §§  
25 1116-17, including injunctive relief and compensatory damages in an amount to be  
26 determined at trial, but in no event having a value of less than \$1 million.

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**SECOND CLAIM FOR REIEF**  
**(California Common Law Trademark Infringement by Plaintiffs Against All Defendants)**

26. Plaintiffs reallege and incorporate by reference all of the preceding paragraphs.

27. Larry King’s name and likeness, and ORA’s *Larry King Now* logo, are inherently distinctive and, to a significant portion of the consuming public, have come to identify the source of the professional and endorsement services Mr. King has licensed to LKE and ORA, and which LKE and ORA license to the public. Plaintiffs own and enjoy common law trademark rights in said marks under California law, which rights are superior to any rights that Defendant may claim in and to those trademarks with respect to Defendants’ products, services, and commercial activities. Plaintiffs’ marks are inherently distinctive and have acquired secondary meaning with the trade and consuming public, and/or have become distinctive in the minds of customers, in that Plaintiffs trademarks are associated with Plaintiffs or Plaintiffs’ licensor Larry King.

28. Defendants have, without Mr. King’s, LKE’s or ORA’s permission, misappropriated Mr. King’s name and likeness, and combined that name and likeness with statements falsely attributed to him, to mislead and confuse the public into believing that Mr. King, approves of, endorses, or is otherwise associated with Defendants and their services and commercial activities, when in fact neither Mr. King, LKE, nor ORA approve of, endorse, or are in any way associated with Defendants or their services or commercial activities. Defendant’s use of Plaintiffs’ trademarks in connection with the advertising, distribution, marketing, promotion, offer for sale, and/or sale of Defendants’ products, services, and commercial activities is likely to cause confusion and, on information and belief, has caused confusion among the public that Larry King has approved, authorized, endorsed or otherwise is associated with Defendants’ services.





1 rights of Larry King without Plaintiffs' retaining control thereof or receiving income  
2 properly owing to them as the exclusive licensee of Plaintiff's rights of publicity.

3 41. Defendants' wrongful actions as described above are causing Plaintiffs  
4 irreparable harm, and have damaged and continue to damage Plaintiffs in an amount  
5 yet to be determined, but in no event having a value of less than \$1 million.

6 42. Defendants did not engage in the above-described wrongful actions out  
7 of any sincere or proper motive, but did so knowingly, willfully and oppressively,  
8 intending to appropriate to themselves without compensation what they knew to be  
9 Plaintiffs' valuable rights. Said misconduct was also fraudulent, in that the public  
10 was led to believe, falsely, that Plaintiffs consented to such commercial use of Larry  
11 Kings' name and likeness, and were associated with and approved of Defendants  
12 products, services and commercial activities.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs respectfully request that the Court:

15 1. Preliminarily and permanently enjoining Defendants and all persons  
16 acting in active concert or participation with them from using the name, likeness or  
17 image of Larry King in connection with any products, services, or commercial  
18 activities, or in connection with the marketing, distribution or advertising of any  
19 products, services or commercial activities, including but not limited to any the  
20 actions described in this complaint.

21 2. Preliminarily and permanently enjoining Defendants and all those  
22 acting in active concert with them from using Larry King's name, likeness or image,  
23 ORA's *Larry King Now* logo, and any other of Plaintiffs' common law marks or any  
24 marks confusingly similar thereto, or attributing any statements to Larry King, for  
25 the purpose of the sale, distribution, marketing, advertising, licensing, implying the  
26 endorsement of Larry King, or otherwise promoting either of Defendants or  
27 Defendants' goods, services or commercial activities;

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1           3.       Requiring Defendants to remove from the Internet and any and all other  
2 media in which Defendants have ever placed them all advertising, merchandising,  
3 electronic press kits, videos, promotional materials, and any other things bearing any  
4 or all of the marks, names, images, likenesses, or real or fictitious sayings of Larry  
5 King and all other items which are confusingly similar thereto;

6           4.       Preliminarily and permanently enjoining Defendants and all those  
7 acting in active concert or participation with them continuing to use any previous  
8 reproduction, public performance of or derivative work containing any portion of  
9 the Mock Interview in the “Nate Holzapfel” and “Nate Holzapfel - Nate State of  
10 Mind” videos Defendants posted on YouTube, or from reproducing, publicly  
11 performing, or creating a derivative work containing any portion of the Mock  
12 Interview in the future;

13           5.       Requiring Defendants to account to Plaintiffs for all revenues  
14 Defendants have received as a result of their unauthorized misappropriation and  
15 infringement of Plaintiffs’ copyright, common law trademarks, and rights of  
16 publicity from the inception of said infringement to the date of judgment herein;

17           6.       That Plaintiffs have and recover a money judgment reflecting their  
18 compensatory and general damages at trial;

19           7.       For punitive damages against defendants for their oppressive,  
20 fraudulent, and malicious conduct;

21           8.       That Defendants be ordered to pay Plaintiffs’ costs, including  
22 reasonable attorneys’ fees, and

23           9.       For such other and further relief as the Court deems just and proper.  
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1 DATED: November 7, 2018

RIMON, P.C.

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By: /s/ Mark S. Lee

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**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs hereby demand a trial by jury on all of the claims in their complaint that are triable by a jury.

DATED: November 7, 2018

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