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7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 NICHE MEDIA HOLDINGS, LLC, a Nevada
limited liability company,

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12 Plaintiff,

13 v.
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15 NICHE DOWNTOWN, LLC, a Connecticut
limited liability company; JOSEPH A.
16 GAZZOLA, an individual,

17 Defendants.
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CASE NO.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

- (1) Unfair Competition
under 15 U.S.C. § 1125(a)
- (2) Cybersquatting
under 15 U.S.C. § 1125(d)
- (3) Common Law Trademark Infringement
- (4) Intentional Interference with
Prospective Economic Advantage

19 For its complaint, Niche Media Holdings, LLC alleges the following.

20 **NATURE OF THE CASE**

21 This is an action for cybersquatting and unfair competition, with pendent state and/or
22 common law claims for trademark infringement and intentional interference with prospective
23 economic advantage. Plaintiff seeks damages, attorneys' fees, costs, and preliminary and
24 permanent injunctive relief.
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1 **JURISDICTION AND VENUE**

2 1. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C.
3 §§ 1331 and 1338(a). This Court has supplemental jurisdiction over Plaintiff's state and
4 common law claims pursuant to 28 U.S.C. § 1367(a).

5 2. This Court has personal jurisdiction over Defendants based upon the following:
6 (a) Defendants operate a website on the Internet that is accessible to residents of the State of
7 Nevada; (b) Defendants' website sold subscriptions to Defendants' publication and collected
8 email addresses; and (c) Defendants have committed tortious acts that Defendants knew or
9 should have known would cause injury to a Nevada resident in the State of Nevada.

10 3. Venue is proper in the United States District Court for the District of Nevada
11 under 28 U.S.C. §§ 1391(b) and 1391(c). Venue lies in the unofficial Southern division of this
12 Court.

13 **PARTIES**

14 4. Plaintiff Niche Media Holdings, LLC is a Nevada limited liability company with
15 its principal place of business in Las Vegas, Nevada.

16 5. Upon information and belief, Defendant Niche Downtown, LLC is a Connecticut
17 limited liability company located and doing business in Tarrifville, Connecticut.

18 6. Upon information and belief, Defendant Joseph A. Gazzola ("Gazzola") is an
19 individual who resides and conducts business in Tarrifville, Connecticut.

20 7. Defendant Gazzola is an officer or director of Defendant Niche Downtown, LLC
21 and personally directed, controlled, ratified, participated in, and/or authorized the infringing and
22 tortious activities described herein.

23 8. Upon information and belief, Defendants Niche Downtown, LLC and Gazzola are
24 each the alter ego of the other, and are the officer, agent, servant, representative, and/or
25 employee of the other, acting in participation with the other, having authority or apparent
26 authority to bind the other.

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ALLEGATIONS COMMON TO ALL COUNTS

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2 9. Plaintiff and its corporate family (collectively “Plaintiff”) are the country’s
3 preeminent regional publication group catering exclusively to the high-end luxury market
4 through such distinctive publications as ASPEN PEAK, BOSTON COMMON, CAPITOL FILE,
5 GOTHAM, HAMPTONS, LOS ANGELES CONFIDENTIAL, and VEGAS. Plaintiff’s
6 publications celebrate the worlds of culture, fashion, fine dining, real estate, and nightlife.

7 10. Having been first established in 2000, Plaintiff is the leader in controlled luxury-
8 lifestyle publications and has the largest circulation of its kind in each market.

9 11. Each of Plaintiff’s publications has “a finger on the pulse” of the community
10 served by the publication, as chronicled by the most “in-the-know” contributors writing about the
11 topics that matter most to them. The publications are luxurious, oversized, and filled with the
12 world’s most sought-after brands, which results in a high renewal rate with advertisers.

13 12. Plaintiff’s publications provide direct access to the “hottest,” most high-profile
14 events, including charity galas, fashion shows, film and music festivals, movie premieres, and
15 sporting events in each city Plaintiff serves.

16 13. Plaintiff made a substantial investment to partner with Experian, one of the largest
17 and most respected data bureaus in the country, to target its market – those persons who have
18 liquid assets of more than \$1 million, household values over \$1 million, and/or \$200,000 or more
19 in annual income and liquid investable assets exceeding \$1 million. These filters guarantee that
20 Plaintiff’s readers are in the top 10 percent of the nation’s wealth rating, elevating Plaintiff to a
21 category that exclusively belongs to it.

22 14. However, exposure to Plaintiff’s publications is not limited to direct mail.
23 Plaintiff’s publications are featured in 60 percent of all private planes that are purchased or
24 leased, placed in the vehicles of the leading private-car services around the country, and are
25 placed in the most prominent properties, high-end retail locations, the most “buzz-worthy” and
26 celebrated events in each city Plaintiff serves, as well as at upscale newsstands, bookstores, and
27 airports.

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1 15. Plaintiff owns rights in a group of NICHE Marks, including the NICHE MEDIA
2 mark, which it has used extensively since 2000.

3 16. Plaintiff has several federal trademark applications pending to register the NICHE
4 Marks on the Principal Register of the United States Patent and Trademark Office (“USPTO”)
5 including, among others, NICHE MEDIA for printed and online lifestyle publications (Serial No.
6 78/683,686), NICHE MEDIA ONLINE for online lifestyle publications (Serial No. 78/782,523),
7 and NICHE MEDIA WORLDWIDE for printed and online lifestyle publications (Serial No.
8 78/782,547) (collectively, “NICHE Marks”). These federal trademark applications have not
9 been abandoned, canceled, or revoked.

10 17. Plaintiff has spent substantial sums of money to advertise and promote the
11 NICHE Marks in print, broadcast media, and on the Internet through Plaintiff’s website
12 accessible throughout the United States and around the world at <nichemediallc.com>.

13 18. Based on its use of the NICHE Marks, Plaintiff has the exclusive right to use the
14 NICHE Marks in connection with printed and online lifestyle publications.

15 19. Plaintiff’s BOSTON COMMONS, GOTHAM, and HAMPTONS publications are
16 all distributed in the Hartford, Connecticut area.

17 20. On or about September 15, 2006, Defendant Gazzola organized Defendant Niche
18 Downtown, LLC.

19 21. Upon information and belief, Defendant Niche Downtown, LLC also conducts
20 business as “Elegant Nightlife” and “Niche Hartford Magazine.”

21 22. On or about November 17, 2006, Defendant Gazzola registered the
22 <nichehartford.com> Internet domain name with GoDaddy.com, Inc. (“GoDaddy”), a domain
23 name registrar, using the name “Elegant Nightlife.”

24 23. The <nichehartford.com> domain name contains the NICHE Marks.

25 24. Some time after registration, Defendants linked the <nichehartford.com> domain
26 name to an online website designed to promote and sell subscriptions for Defendants’ soon-to-

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1 be-released “Niche Hartford” magazine, a publication dedicated to trendy and upscale dining,
2 music, fashion, art, culture and nightlife in Hartford, Connecticut.

3 25. On or about January 1, 2007, Defendants launched the premier issue of the
4 “Niche Hartford” magazine.

5 26. The name of Defendants’ publication incorporates the NICHE Marks.

6 27. Since the initial launch, Defendants have created, sold and/or distributed at least
7 five subsequent issues of the magazine – the Spring, Spring 2007, Summer 2007, Fall 2007 and
8 Anniversary 2008 issues.

9 28. Plaintiff, through counsel, contacted Defendants and demanded that they cease
10 their infringing conduct.

11 29. Rather than comply with Plaintiff’s request, Defendants expanded their use of the
12 NICHE Marks throughout their website and created pages promoting Defendants’
13 “NicheMagazine,” “NicheGallery” and “NicheFamily.”

14 30. By using a mark that incorporates the NICHE Marks, Defendants were and are
15 attempting to trade on the goodwill of Plaintiff.

16 31. By registering and using a domain name containing the NICHE Marks,
17 Defendants were and are attempting to trade on the goodwill of Plaintiff and/or are creating, or
18 are attempting to create, an association between Defendants and Plaintiff.

19 32. By registering and using the <nichehartford.com> domain name, Defendants were
20 and are attempting to frustrate or divert Internet traffic intended for Plaintiff.

21 **COUNT I**
22 (Unfair Competition under
the Lanham Act, 15 U.S.C. § 1125(a))

23 33. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set
24 forth herein.

25 34. Defendants’ use in commerce of a mark that is the same and/or confusingly
26 similar to the NICHE Marks in connection with Defendants’ publication, website, and the
27 <nichehartford.com> domain name constitutes a false designation of origin and/or a false or
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1 misleading description or representation of fact, which is likely to cause confusion, cause
2 mistake, or deceive as to affiliation, connection, or association with Plaintiff, or as to the origin,
3 sponsorship, or approval of Defendants' services or commercial activities by Plaintiff.

4 35. Defendants' use in commerce of the NICHE Marks and/or a mark confusingly
5 similar thereto with the knowledge that Plaintiff own and have used, and continue to use, their
6 trademarks, constitutes intentional conduct by Defendants to make false designations of origin
7 and false descriptions about Defendants' activities.

8 36. As a direct and proximate result of such unfair competition, Plaintiff has suffered,
9 and will continue to suffer, monetary loss and irreparable injury to its business, reputation, and
10 goodwill.

11 **COUNT II**
12 (Cybersquatting under
the Lanham Act, 15 U.S.C. § 1125(d))

13 37. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set
14 forth herein.

15 38. Defendants have registered, trafficked in, and/or used a domain name that is
16 confusingly similar to and/or dilutive of the NICHE Marks, which were distinctive and/or
17 famous at the time Defendants registered the <nichehartford.com> domain name.

18 39. Upon information and belief, Defendants have or have had a bad faith intent to
19 profit from the NICHE Marks.

20 40. As a direct and proximate result of such conduct, Plaintiff has suffered, and will
21 continue to suffer, monetary loss and irreparable injury to its business, reputation, and goodwill.

22 **COUNT III**
23 (Common Law Trademark Infringement)

24 41. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set
25 forth herein.

26 42. By virtue of having used and continuing to use the NICHE Marks, Plaintiff has
27 acquired common law trademark rights in the NICHE Marks.

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1 43. Defendants' use of a mark the same and/or confusingly similar to the NICHE
2 Marks infringes Plaintiff's and the Trademark Owner's common law trademark rights in the
3 NICHE Marks and is likely to cause confusion, mistake, or deception among consumers, who
4 will believe that Defendants' activities, magazine, website and/or Internet domain name originate
5 from, or are affiliated with, or are endorsed by Plaintiff, when, in fact, they are not.

6 44. As the direct and proximate result of Defendants' infringement of the Plaintiff's
7 common law trademark rights under Nevada and other common law, Plaintiff has suffered, and
8 will continue to suffer, monetary damages and irreparable injury to its business, reputation, and
9 goodwill.

10 **COUNT IV**
11 (Intentional Interference with
Prospective Economic Advantage)

12 45. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set
13 forth herein.

14 46. Upon information and belief, at the time Defendants adopted and began using a
15 mark that is the same and/or confusingly similar to the NICHE Marks, and since that time,
16 Defendants knew and have known that Plaintiff is in the business of providing printed and online
17 lifestyle publications, and that Plaintiff advertises these goods and services on the Internet using
18 the NICHE Marks.

19 47. Upon information and belief, Defendants committed acts intended or designed to
20 disrupt Plaintiff's and the Trademark Owner's prospective economic advantage arising from
21 providing their goods and services.

22 48. Defendants' actions have disrupted or are intended to disrupt Plaintiff's and the
23 Trademark Owner's business by, among other things, diverting web users away from Plaintiff's
24 website and to the "Niche Hartford" website Defendants linked to the <nichehartford.com>
25 domain name.

26 49. Defendants have no legal right, privilege or justification for their conduct.
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1 50. As a direct and proximate result of Defendants' intentional interference with
2 Plaintiff's and the Trademark Owner's prospective economic advantage, Plaintiff has suffered,
3 and will continue to suffer, monetary damages and irreparable injury.

4 51. Based on the intentional, willful and malicious nature of Defendants' actions,
5 Plaintiff is entitled to recover monetary damages, exemplary or punitive damages and reasonable
6 attorneys' fees, and costs incurred in connection with this action.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff respectfully prays that the Court grant the following relief:

9 A. A preliminary and permanent injunction prohibiting Defendants, Defendants'
10 respective officers, agents, servants, employees and/or all persons acting in concert or
11 participation with Defendants, from: (1) using the NICHE Marks or confusingly similar
12 variations thereof, alone or in combination with any other letters, words, letter strings, phrases or
13 designs, in commerce or in connection with any business or for any purpose whatsoever
14 (including, but not limited to, printed and online publications, on websites, and in domain
15 names); and (2) registering or trafficking in any domain names containing the NICHE Marks or
16 confusingly similar variations thereof, alone or in combination with any other letters, words,
17 phrases or designs.

18 B. A preliminary and permanent injunction requiring the current domain name
19 registrar to transfer the <nichehartford.com> domain name to Plaintiff;

20 C. A preliminary and permanent injunction preventing Defendants from advertising,
21 marketing, promoting, distributing, and/or selling advertising space in the "Niche Hartford"
22 publication;

23 D. An award of compensatory, consequential, statutory, exemplary, and/or punitive
24 damages to Plaintiff in an amount to be determined at trial;

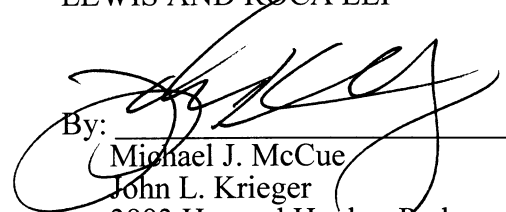
25 E. An award of interest, costs and attorneys' fees incurred by Plaintiff in prosecuting
26 this action; and
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F. All other relief to which Plaintiff is entitled.

DATED: March 14, 2008.

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By: _____

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