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6 ENTERPRISES, INC. and MARVEL
7 CHARACTERS, INC.

8 UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 MARVEL ENTERPRISES, INC., a
11 Delaware corporation, and MARVEL
12 CHARACTERS, INC., a Delaware
Corporation,

13 Plaintiffs,

14 vs.

15 NCSOFT CORPORATION, a South
16 Korean corporation, and CRYPTIC
STUDIOS, INC., a California
17 Corporation,

18 Defendants.

Case No.:

COMPLAINT FOR:

1. **COPYRIGHT INFRINGEMENT (17 U.S.C. §§ 101 et seq.)**
2. **TRADEMARK INFRINGEMENT (15 U.S.C. §1114)**
4. **TRADEMARK INFRINGEMENT (15 U.S.C. §1125)**
5. **INTENTIONAL INTERFERENCE WITH ACTUAL AND PROSPECTIVE ECONOMIC ADVANTAGE**
6. **STATUTORY UNFAIR COMPETITION [DAMAGES] IN VIOLATION OF BUS. & PROF. CODE SECTION 17200 et seq.**
7. **CALIFORNIA COMMON LAW UNFAIR COMPETITION**
8. **DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiffs Marvel Enterprises, Inc. and Marvel Characters, Inc. (collectively,
2 “Plaintiffs” or “Marvel”), by their undersigned attorneys, hereby complain against
3 defendants NCSoft Corporation and Cryptic Studios (collectively, “Defendants”), as
4 follows:

5 INTRODUCTION

6 1. This is a civil action by Marvel against Defendants for direct,
7 contributory and vicarious copyright and trademark infringement, as well as unfair
8 business practices, arising out of Defendants’ creation, distribution and online
9 facilitation of the computer game entitled “City of Heroes.” According to
10 Defendants, “City of Heroes brings the world of comic books alive in the first PC
11 massively multiplayer online game of its kind.” Considering that Defendants own
12 no comic book characters themselves, it stands to reason that the comic books to
13 which they refer are those that depict the characters of Marvel and others. Through
14 its character creation engine (the “Creation Engine”), City of Heroes enables players
15 to create customized “Heroes,” which then enter “Paragon City” by way of
16 Defendants’ internet servers and engage in multiplayer online games.
17 Unfortunately, Defendants’ Creation Engine facilitates and, indeed, encourages
18 players to create and utilize Heroes that are nearly identical in name, appearance and
19 characteristics to characters belonging to Marvel.

20 2. Within minutes of loading City of Heroes onto a personal computer
21 (“PC”), a player can use Defendants’ character Creation Engine to “create” a
22 gigantic, green, “science-based” “tanker” – type Hero that looks, moves and behaves
23 nearly identically to Marvel’s character “The Incredible Hulk.” The player can even
24 name his or her “creation” “The Hulk” and enter Paragon City to join scores of other
25 such infringing Heroes.

1 throughout the Unites States, including California, and offers its products for sale
2 through various retail outlets and over the internet.

3 8. Marvel is informed and believes and based thereon alleges that
4 Defendant Cryptic Studios, Inc. (“Cryptic”) is a corporation organized and existing
5 under and by virtue of the laws of the State of California, with its principal offices in
6 San Jose, California. Cryptic does business throughout the Unites States, including
7 California, and offers its products for sale through various retail outlets and over the
8 internet.

9 9. Marvel is informed and believes and based thereon alleges that
10 Defendants, and each of them, are and were at all times herein mentioned, the
11 agents, servants, employees and/or joint venturers of each of the other Defendants,
12 and at all times herein mentioned were acting within the course and scope of said
13 agency, employment or joint venture.

14 **JURISDICTION**

15 10. This Complaint alleges copyright infringement arising under the
16 Copyright Act of 1976, 17 U.S.C. §§ 101, 201(d), and 204(a) *et seq.*, and also
17 alleges trademark infringement and unfair competition arising under the Lanham
18 Act of 1946 (as amended), 15 U.S.C. §1114 and 15 U.S.C. § 1125(a). This Court
19 has subject matter jurisdiction over the federal questions presented, pursuant to
20 U.S.C. § 1121(a) and 28 U.S.C. § 1331 and 1138(a) and (b).

21 11. This Complaint also alleges violations of California law. This Court
22 has supplemental jurisdiction over these claims pursuant to 28 U.S.C. § 1338(b) and
23 § 1367(a).

24 **VENUE**

25 12. Venue is proper in this district pursuant to the provisions of 28 U.S.C.
26 §§ 1391 (b) and (c) and 1400 (a) because a substantial part of the events giving rise
27 to this lawsuit occurred in this district and because Defendants conduct continuous
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1 and systematic business in this district, advertise in this district and have caused
2 many of the injuries complained of to occur in this district.

3 **FACTUAL BACKGROUND**

4 13. In addition to its comic books and other world-famous publications,
5 Marvel licenses the exclusive rights to its universe of over 4,700 characters (the
6 “Marvel Characters”) including, but not limited to, Captain America, Spider-Man,
7 X-Men and The Incredible Hulk. Marvel also engages in the merchandising of
8 products based on the Marvel Characters. Merchandising and licensing account for
9 over 70% of Marvel’s annual income. Indeed, the core of Marvel’s business is the
10 exploitation of its valuable intellectual property, which is protected under the laws
11 of the United States governing copyright and trademark.

12 14. One of the areas in which Marvel actively licenses its world famous
13 Characters is the enormously popular and lucrative computer/console gaming
14 market – the very market that City of Heroes was created to exploit. Among the
15 many such games based on the Marvel Characters is “X-Men Legends,” an
16 Activision game based on Marvel’s X-Men Universe, which is one of the most
17 successful and critically acclaimed computer/console games currently on the market.
18 Marvel is actively and aggressively pursuing similar licensing agreements with
19 several other game developers/manufacturers. Needless to say, the existence and
20 proliferation of games (such as City of Heroes) that blatantly infringe upon and
21 wrongfully exploit the popularity of the Marvel Characters poses a serious threat to
22 the success of Marvel’s core business relationships and financial success in the
23 gaming industry.

24 15. Defendants promote their City of Heroes game as a “massively
25 multiplayer online game” that “brings the world of comic books alive.” Indeed,
26 City of Heroes can only be played online and only by way of Defendants’ servers.
27 According to Defendants, over 180,000 new subscribers purchased City of Heroes
28 and signed up for Defendants’ service in the first three months of the game’s release

1 alone. Once loaded onto a PC, City of Heroes' character Creation Engine enables
2 the user to "create" Heroes that possess a variety of different attributes, powers and
3 appearances, all of which are integrated into Defendants' software. "Statesman," a
4 character strikingly similar to Marvel's Captain America (right down to the
5 trademark large white star on his chest and shield), prominently appears on the front
6 of the City of Heroes box and guides the user through the "creation" process by way
7 of the "Game Manual." Defendants' infringement is so brazen that their only
8 attempt to disguise "Statesman" was to give him a helmet that is nearly identical to
9 the trademark helmet worn by "Magneto," another of Marvel's X-Men characters.
10 Indeed, the consumer's initial introduction to City of Heroes is via "Statesman," a
11 tactic that Marvel believes is specifically designed to confuse consumers into falsely
12 believing that Marvel has endorsed or otherwise participated in the creation and
13 distribution of City of Heroes.

14 16. The Creation Engine takes users through a multi-stage "creation"
15 process. First, the user chooses the Hero's "Origin," which may be "Mutant" (a
16 genre into which virtually all of the Marvel Characters fall, including the popular X-
17 Men Characters), "Science," "Technology," "Natural" or "Magic." The user then
18 chooses the Hero's "Archetype," which may be a "Blaster," "Controller,"
19 "Defender," "Scrapper" or "Tanker." Finally, the user chooses the particular
20 attributes and appearance of the newly "created" Hero and enters Paragon City by
21 way of Defendants' servers to interact with other Heroes and villains, many of
22 whom also have been "created" through the direct infringement of Marvel
23 copyrights and trademarks. Notably, the City of Heroes character Creation Engine
24 does not allow the user to start from scratch; Defendants' software limits the
25 consumer's options and leads the user through a series of choices within the
26 confines of categories that are specifically dictated by Defendants' software.

1 17. One example is Wolverine, one of Marvel’s most popular X-Men
2 characters and perhaps the most prominent character in the hugely successful movie
3 “X-Men” and its sequel, “X-2.” Wolverine’s defining characteristics are as follows:
4 (1) he is a mutant; (2) he is a scrappy fighter who specializes in hand-to-hand
5 combat; (3) he has three unbreakable metal claws that protrude from his between his
6 fingers and can be used as weapons; and (4) he has incredible regenerative powers
7 that enable him to heal quickly from injuries sustained in battle.

8 18. In designing and marketing City of Heroes, Defendants have not only
9 made it *possible* for users to “create” Heroes that are nearly identical to Marvel
10 characters such as Wolverine – the very structure and flow of the Creation Engine
11 leads the user to do precisely that, and thus to create characters that infringe Marvel
12 copyrights. For example, if a user chooses the “Mutant” origin option (there are
13 only five “Origin” choices), the Creation Engine then prompts the user to choose
14 from one of five “Archetypes,” one of which is “Scrapper.” The Creation Engine
15 then prompts the user to choose one of six “Primary Power Sets,” one of which is
16 “Claws.” If the user chooses “Claws,” she then chooses between “Swipe” or
17 “Strike” claws. Next, the Creation Engine prompts the user to choose from four
18 “Secondary Power Sets,” one of which is “Regeneration.” Choosing “Regeneration”
19 leaves the user with only “Fast Healing” for a “Secondary Power” option. Less than
20 one minute into this process, the user has “created” a Hero that: (1) is a mutant; (2)
21 is a scrappy fighter who specializes in hand-to-hand combat; (3) has three metal
22 claws that protrude from his hands and can be used as weapons; and (4) has
23 incredible regenerative powers that enable him to heal quickly from injuries
24 sustained in battle. In other words, the user has “created” a clone of Wolverine. In
25 yet another example of their conscious disregard for Marvel’s intellectual property
26 rights, Defendants boldly display the Wolverine-type character in “screenshots”
27 used to entice consumers into buying City of Heroes.

1 19. The Creation Engine then prompts the user to customize the look and
2 appearance of the Hero, from the Hero's hairstyle to the clothes he will don in the
3 game. Finally, the user is prompted to assign a name to the newly "created" Hero
4 before entering Paragon City. The Creation Engine, however, will not permit the
5 user to assign the name "Wolverine" to the new Hero; not because doing so would
6 violate Marvel's valuable intellectual property rights, but because, as the game
7 quickly informs the user, "that name is already taken." If, on the other hand, the
8 user names his new Hero "Wolverine20" or "Woolvereen," he can enter Paragon
9 City immediately and interact with scores of other infringing Heroes; perhaps
10 meeting the user that got to the name Wolverine before he did.

11 20. Users can just as easily create an infringing clone of The Incredible
12 Hulk by choosing the "Science" origin, the "Tanker" archetype, and the "huge,"
13 "muscular," "indestructible" and "powerful" characteristics. All that is left is to
14 paint the character green, give him short pants that reflect his enormous change in
15 size (a defining characteristic of The Incredible Hulk) and assign him a name. As
16 with Wolverine, the user cannot name his new Hero "The Hulk" because, alas, "that
17 name is already taken." "Hulk10," however can enter Paragon City immediately.

18 21. Wolverine and The Incredible Hulk are but two examples of Marvel
19 Characters that Defendants' game enables (indeed, encourages) consumers to
20 infringe. Truth be told, the number of infringing Heroes that can be "created" using
21 Defendants' software is limited only by the user's familiarity with the Marvel
22 Characters. Given the enormous popularity and long term public exposure of the
23 Marvel Characters in the print and visual media, the potential for infringement (and
24 resulting damage to Marvel) is staggering, to say the least.

1 **FIRST CLAIM FOR RELIEF – DIRECT COPYRIGHT INFRINGEMENT**

2 **17 U.S.C. § 101 et seq.**

3 (Against All Defendants)

4 22. Marvel hereby incorporates the allegations contained in paragraphs 1
5 through 21, inclusive, as though set forth in full.

6 23. The expression contained in the Marvel Characters is wholly original
7 and is copyrightable subject matter under the copyright laws of the United States.

8 24. As of March 13, 1962, a Certificate of Registration was issued by the
9 Register of Copyrights for The Incredible Hulk and bears registration number
10 B958840. A true and correct copy of this certificate is attached hereto as Exh. A
11 and is incorporated by reference.

12 25. As of July 16, 1963, a Certificate of Registration was issued by the
13 Register of Copyrights for The X-Men Vol. 1 No. 1 (in which Magneto first
14 appeared) and bears registration number 51855. A true and correct copy of this
15 certificate is attached hereto as Exh. B and is incorporated by reference.

16 26. As of November 4, 1968, a Certificate of Registration was issued by
17 the Register of Copyrights for Captain America and bears registration number
18 463904. A true and correct copy of this certificate is attached hereto as Exh. C and
19 is incorporated by reference.

20 27. As of August 20, 1974, a Certificate of Registration was issued by the
21 Register of Copyrights for Incredible Hulk Vol. 1 No. 180 (in which Wolverine first
22 appeared) and bears registration number 956186. A true and correct copy of this
23 certificate is attached hereto as Exh. D and is incorporated by reference.

24 28. Marvel is the sole owner of all right, title and interest in and to the
25 copyrights in the Marvel Characters and the expression they contain. Marvel has
26 complied in all respects with the provisions of the Copyright Act of 1976.
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1 29. Marvel is informed and believes, and based thereon alleges, that
2 Defendants have knowingly and willfully copied numerous Marvel Characters, and
3 the expression they contain, including, but not limited to, Captain America,
4 Wolverine and The Incredible Hulk in the creation, distribution and marketing of
5 their City of Heroes game. Among other things, Defendants’ “Statesman” character
6 is a blatant rip-off of Marvel’s Captain America. Defendants had direct access to
7 the Marvel Characters by virtue of the widespread and long-term public exposure of
8 the Marvel Characters in both the printed and audio-visual media. Indeed, the
9 Marvel Characters are among the most recognizable in the “world of comic books”
10 that Defendants claim to “bring alive” in City of Heroes, and Defendants’ principals
11 have mentioned Marvel as an inspiration in several articles and interviews.

12 30. Marvel is further informed and believes that Defendants, through their
13 City of Heroes game, will continue to infringe upon Marvel’s copyrights in and to
14 the Marvel Characters.

15 31. Each of the Defendants willfully, wantonly and, in conscious disregard
16 and intentional indifference to Marvel’s rights under the Copyright Act aided,
17 abetted, contributed to and participated in the unauthorized copying and distribution
18 of the Marvel Characters as described above. Defendants knew or should have
19 known that the Marvel Characters are protected by copyright. Each of the
20 Defendants continues to infringe on Marvel’s rights in and to its copyrighted works
21 by marketing, distributing and facilitating their City of Heroes game and otherwise
22 exploiting rights that belong exclusively to Marvel.

23 32. The natural, probable and foreseeable consequence of Defendants’
24 wrongful conduct has been and will continue to be to deprive Marvel of the benefits
25 of its intellectual property and of licensing, marketing and promoting the Marvel
26 Characters.

1 literally thousands of infringing Heroes roaming the streets of Paragon City at any
2 given moment.

3 38. By its very nature and design, Defendants' City of Heroes game
4 induces, causes and materially contributes to the direct infringement of Marvel's
5 copyrights in and to the Marvel Characters.

6 39. Defendants knew or should have known that a significant number of
7 the 180,000+ users of their game are "creating" and utilizing Heroes that directly
8 infringe upon Marvel's copyrights in an to the Marvel Characters. Defendants
9 continuously and materially contribute to their users' direct infringement by, among
10 other things, providing the precise tools by which users "create" their infringing
11 Heroes and providing users with the keys to Paragon City, the forum specifically
12 created and serviced by Defendants to facilitate game play. Indeed, because City of
13 Heroes can only be played online and only by way of Defendants' servers,
14 Defendants are aware, or are on notice, and should be aware, of each and every
15 infringing Hero that walks the streets of Paragon City. Without the Creation Engine
16 and support services Defendants provide, users could not "create" their infringing
17 Heroes in the first place.

18 40. Marvel is informed and believes that Defendants, through their City of
19 Heroes game, will continue to contribute to the infringement of Marvel's copyrights
20 in and to the Marvel Characters.

21 41. Each of the Defendants willfully, wantonly and, in conscious disregard
22 and intentional indifference to Marvel's rights under the Copyright Act has aided,
23 abetted, contributed to and participated in the unauthorized copying and distribution
24 of the Marvel Characters as described above. Defendants knew or should have
25 known that the Marvel Characters are protected by copyright. Each of the
26 Defendants continues to contribute to the infringement of Marvel's rights in and to
27 its copyrighted works by marketing, distributing and facilitating their City of Heroes
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1 game and otherwise facilitating the exploitation of rights that belong exclusively to
2 Marvel.

3 42. The natural, probable and foreseeable consequence of Defendants'
4 wrongful conduct has been and will continue to be to deprive Marvel of the benefits
5 of its intellectual property and of licensing, marketing and promoting the Marvel
6 Characters.

7 43. As a direct and proximate result of Defendants' contributory
8 infringement of Marvel's copyrighted material, Defendants have realized and
9 continue to realize profits and other benefits rightfully belonging to Marvel. Marvel
10 has suffered and will continue to suffer severe injuries and damage and is entitled to
11 those damages permitted by federal copyright law. Accordingly, Marvel seeks an
12 award of damages pursuant to 17 U.S.C. § 504, as well as its costs and attorneys'
13 fees pursuant to 17 U.S.C. § 505, in an amount to be determined. Because
14 Defendants' conduct is willful, Marvel is entitled to the maximum statutory
15 damages allowed pursuant to 17 U.S.C. § 504(c).

16 44. By and through this Complaint, Marvel hereby demands that
17 Defendants cease contributorily infringing or otherwise violating Marvel's
18 copyrights in and to the Marvel Characters.

19 45. To halt the ever-mounting injury to Marvel, Marvel hereby requests
20 that the Court issue temporary, preliminary and permanent injunctive relief,
21 restraining Defendants from further contributorily infringing or otherwise violating
22 Marvel's intellectual property rights as herein described.
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1 infringement. In fact, despite Defendants' undeniable ability to supervise their
2 users' activities, Defendants have gone so far as to suggest that Marvel should bear
3 the cost and burden of policing Paragon City and reporting any infringing activities
4 to Defendants.

5 49. Defendants know or should know that a significant number of their
6 180,000 + users are "creating" and utilizing Heroes that directly infringe upon
7 Marvel's copyrights in and to the Marvel Characters because, among other things,
8 they have created and offer the tools that enable the users to do precisely that.
9 Defendants continuously and materially contribute to their users' direct
10 infringement by, among other things, providing the very tools by which users
11 "create" their infringing Heroes and providing users with the keys to Paragon City,
12 the forum specifically created and serviced by Defendants to facilitate game play.
13 Indeed, because City of Heroes can only be played online and only by way of
14 Defendants' servers, Defendants' – and only Defendants – are or should be aware of
15 each and every infringing Hero that walks the streets of Paragon City. Without the
16 Creation Engine and support services Defendants' provide, users could not "create"
17 their infringing Heroes in the first place.

18 50. Marvel is informed and believes that Defendants are continuing to
19 facilitate, through their City of Heroes game, the continuous infringement of
20 Marvel's copyrights in and to the Marvel Characters. Defendants therefore are
21 vicariously liable for that infringement.

22 51. Each of the Defendants willfully, wantonly and, in conscious disregard
23 and intentional indifference to Marvel's rights under the Copyright Act has aided,
24 abetted, contributed to and participated in the unauthorized copying and distribution
25 of the Marvel Characters as described above. Defendants knew or should have
26 known that the Marvel Characters are protected by copyright. Each of the
27 Defendants continues to facilitate the infringement of Marvel's rights in and to its
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1 copyrighted works by marketing, distributing and facilitating their City of Heroes
2 game and otherwise facilitating the exploitation of rights that belong exclusively to
3 Marvel, and are vicariously liable for that infringement.

4 52. The natural, probable and foreseeable consequence of Defendants'
5 wrongful conduct has been and will continue to be to deprive Marvel of the benefits
6 of its intellectual property and of licensing, marketing and promoting the Marvel
7 Characters.

8 53. As a direct and proximate result of Defendants' vicarious infringement
9 of Marvel's copyrighted material, Defendants have realized and continue to realize
10 profits and other benefits rightfully belonging to Marvel. Marvel has suffered and
11 will continue to suffer severe injuries and damage and is entitled to those damages
12 permitted by federal copyright law. Accordingly, Marvel seeks an award of
13 damages pursuant to 17 U.S.C. § 504, as well as its costs and attorneys' fees
14 pursuant to 17 U.S.C. § 505, in an amount to be determined. Because Defendants'
15 conduct is willful, Marvel is entitled to the maximum statutory damages allowed
16 pursuant to 17 U.S.C. § 504(c).

17 54. By and through this Complaint, Marvel hereby demands that
18 Defendants cease facilitating the violation of Marvel's copyrights in and to the
19 Marvel Characters.

20 55. To halt the ever-mounting injury to Marvel, Marvel hereby requests
21 that the Court issue temporary, preliminary and permanent injunctive relief,
22 restraining Defendants from further vicariously infringing or otherwise violating
23 Marvel's intellectual property rights as herein described.

1 **FOURTH CLAIM FOR RELIEF – DIRECT TRADEMARK**
2 **INFRINGEMENT**

3 **15 U.S.C. §1114 (1)(a)**

4 (Against All Defendants)

5 56. Marvel hereby incorporates the allegations contained in paragraphs 1
6 through 21, inclusive, as though set forth in full.

7 57. This action arises under the trademark laws of the United States, Title
8 15 of the United States Code.

9 58. Marvel has used the “Captain America” mark in commerce since 1940,
10 the “The Incredible Hulk” mark since 1962, the “Wolverine” mark since 1974, and
11 the “X-Men” mark since 1963. In addition, Marvel has for many years used
12 thousands of other marks that identify and relate to the enormously popular Marvel
13 Characters.

14 59. Marvel is the owner of U.S. Trademark Registration No. 854655 (for
15 “Captain America”), No. 890917 (for “The Incredible Hulk”), No. 1395639 (for
16 “Wolverine”) and No. 1161898 (for “X-Men”).

17 60. Defendants have been using “Statesman,” a character that clearly is
18 derivative of Marvel’s Captain America, in connection with their sale, offer for sale
19 and advertising of City of Heroes.

20 61. Defendants’ use of the star emblem that identifies Captain America,
21 together with the use of the name “Statesman,” which suggests the patriotic qualities
22 of Captain America, is likely to cause confusion, mistake, or deception, in violation
23 of 15 U.S.C. §1114(1)(a).

24 62. Defendants’ use of “Statesman” in connection with their sale, offer for
25 sale and advertising of City of Heroes with knowledge of Marvel’s trademark rights
26 renders Defendants’ trademark infringement willful.

1 63. Defendants’ conduct has caused Marvel to suffer and, unless enjoined
2 by the Court, will cause Marvel to continue to suffer, damage to its operations,
3 reputation and goodwill including, but not limited to, damage to Marvel’s core
4 business of licensing and merchandising the Marvel Characters.

5 64. By reason of Defendants’ wrongful acts, Marvel has been injured in an
6 amount to be determined at trial and is entitled to the remedies provided for in 15
7 U.S.C. §1116 et seq.

8 65. To halt the ever-mounting injury to Marvel, Marvel hereby requests
9 that the Court issue temporary, preliminary and permanent injunctive relief,
10 restraining Defendants from further infringing or otherwise violating Marvel’s
11 intellectual property rights as herein described.

12 **FIFTH CLAIM FOR RELIEF – CONTRIBUTORY TRADEMARK**
13 **INFRINGEMENT**

14 **15 U.S.C. §1114 (1)(a)**

15 (Against All Defendants)

16 66. Marvel hereby incorporates the allegations contained in paragraphs 1
17 through 21 and 55 through 57, inclusive, as though set forth in full.

18 67. The City of Heroes Creation Engine enables Defendants’
19 customers/subscribers to identify their Heroes using names that violate Marvel’s
20 trademarks in the Marvel Characters. Indeed, Paragon City is rife with infringing
21 Heroes whose names are either identical to or slight variations on “Hulk,”
22 “Wolverine,” “Storm,” Captain America,” and countless other Marvel Characters.

23 68. Defendants know or should know that a significant number of their
24 180,000+ users are “creating” Heroes and assigning them names that directly
25 infringe upon Marvel’s trademarks. Defendants continuously and materially
26 contribute to their users’ direct infringement by, among other things, providing the
27 very tools by which users “create” their infringing Heroes and providing users with
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1 the keys to Paragon City, the forum specifically created and serviced by Defendants
2 to facilitate game play. Indeed, because City of Heroes can only be played online
3 and only by way of Defendants' servers, Defendants' are or should be aware of each
4 and every infringing Hero that walks the streets of Paragon City. Without the
5 Creation Engine and support services Defendants' provide, users could not "create"
6 their infringing Heroes in the first place.

7 69. The unauthorized use by Defendants' customers/subscribers of Marvel
8 trademarks and imitations thereof is likely to cause confusion, mistake, or deception,
9 in violation of 15 U.S.C. §1114(1)(a).

10 70. Defendants' have full knowledge of Marvel's trademark rights. As
11 such, Defendants' contributory infringement is willful.

12 71. Defendants' conduct has caused Marvel to suffer and, unless enjoined
13 by the Court, will cause Marvel to continue to suffer, damage to its operations,
14 reputation and goodwill including, but not limited to, damage to Marvel's core
15 business of licensing and merchandising the Marvel Characters.

16 72. By reason of Defendants' wrongful acts, Marvel has been injured in an
17 amount to be determined at trial and is entitled to the remedies provided for in 15
18 U.S.C. §1116 et seq.

19 73. To halt the ever-mounting injury to Marvel, Marvel hereby requests
20 that the Court issue temporary, preliminary and permanent injunctive relief,
21 restraining Defendants from further contributorily infringing or otherwise violating
22 Marvel's intellectual property rights as herein described.

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SIXTH CLAIM FOR RELIEF – VICARIOUS TRADEMARK
INFRINGEMENT

15 U.S.C. §1114 (1)(a)

(Against All Defendants)

74. Marvel hereby incorporates the allegations contained in paragraphs 1 through 21 and 55 through 57, inclusive, as though set forth in full.

75. The City of Heroes Creation Engine enables Defendants’ customers/subscribers to identify their Heroes using names that violate Marvel’s trademarks in the Marvel Characters. Indeed, Paragon City is rife with infringing Heroes whose names are either identical to or slight variations on “Hulk,” “Wolverine,” “Storm,” Captain America,” and countless other Marvel Characters.

76. By its very nature and design, Defendants’ City of Heroes game induces, causes and materially contributes to the direct infringement of Marvel’s trademarks. Considering that City of Heroes can only be played by way of Defendants’ servers, Defendants have the absolute right and ability to supervise and prevent users’ infringing activities. According to Defendants, more than 180,000+ users purchased City of Heroes in the first three months of its April 2004 release. Also according to Defendants, each of those 180,000+ users pays Defendants \$14.95 every month for the privilege of entering Paragon City. Defendants therefore have a direct and significant financial interest in their users’ infringing activities. Rather than fulfilling their obligation to police possible infringement to the fullest extent possible, however, Marvel is informed and believes and based thereon alleges that Defendants have turned a blind eye to their users’ readily detectable acts of infringement.

77. Defendants know or should know that a significant number of their 180,000+ users are “creating” Heroes and assigning them names that directly infringe upon Marvel’s trademarks. Defendants continuously and materially

1 contribute to their users' direct infringement by, among other things, providing the
2 very tools by which users "create" their infringing Heroes and providing users with
3 the keys to Paragon City, the forum specifically created and serviced by Defendants
4 to facilitate game play. Indeed, because City of Heroes can only be played online
5 and only by way of Defendants' servers, Defendants' are or should be aware of each
6 and every infringing Hero that walks the streets of Paragon City. Without the
7 Creation Engine and support services Defendants' provide, users could not "create"
8 their infringing Heroes in the first place. Defendants therefore are vicariously liable
9 for all such infringement.

10 78. The unauthorized use by Defendants' customers/subscribers of Marvel
11 trademarks and imitations thereof is likely to cause confusion, mistake, or deception,
12 in violation of 15 U.S.C. §1114(1)(a).

13 79. Defendants' have full knowledge of Marvel's trademark rights. As
14 such, Defendants' vicarious infringement is willful.

15 80. Defendants' conduct has caused Marvel to suffer and, unless enjoined
16 by the Court, will cause Marvel to continue to suffer, damage to its operations,
17 reputation and goodwill including, but not limited to, damage to Marvel's core
18 business of licensing and merchandising the Marvel Characters.

19 81. By reason of Defendants' wrongful acts, Marvel has been injured in an
20 amount to be determined at trial and is entitled to the remedies provided for in 15
21 U.S.C. §1116 et seq.

22 82. To halt the ever-mounting injury to Marvel, Marvel hereby requests
23 that the Court issue temporary, preliminary and permanent injunctive relief,
24 restraining Defendants from further vicariously infringing or otherwise violating
25 Marvel's intellectual property rights as herein described.
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1 **SEVENTH CLAIM FOR RELIEF – DIRECT TRADEMARK**
2 **INFRINGEMENT**
3 **15 U.S.C. §1125**

4 (Against All Defendants)

5 83. Marvel hereby incorporates the allegations contained in paragraphs 1
6 through 21 and 55 through 57, inclusive, as though set forth in full.

7 84. Defendants have been using “Statesman,” a character that clearly is
8 derivative of Marvel’s Captain America, in connection with their sale, offer for sale
9 and advertising of City of Heroes.

10 85. Defendants’ are using the “Statesman” mark in interstate commerce
11 without authorization or consent by Marvel. Defendants’ use of the star emblem
12 that identifies Captain America, together with the use of the name “Statesman,”
13 which suggests the patriotic qualities of Captain America, is likely to cause
14 confusion, mistake, or deception, in violation of 15 U.S.C. §1125. In addition,
15 Defendants’ use of “Statesman” on the City of Heroes packaging is likely to mislead
16 and deceive the public into believing that City of Heroes either originates, is
17 endorsed by or is otherwise sanctioned by Marvel. Defendants’ infringement of
18 Marvel’s trademarks, especially in connection with a product so closely related to
19 Marvel’s core business, dilutes and devalues Marvel’s trademarks.

20 86. Defendants’ use of “Statesman” in connection with their sale, offer for
21 sale and advertising of City of Heroes with knowledge of Marvel’s trademark rights
22 renders Defendants’ trademark infringement willful.

23 87. Defendants’ conduct has caused Marvel to suffer and, unless enjoined
24 by the Court, will cause Marvel to continue to suffer, damage to its operations,
25 reputation and goodwill including, but not limited to, damage to Marvel’s core
26 business of licensing and merchandising the Marvel Characters.
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1 88. By reason of Defendants’ wrongful acts, Marvel has been injured in an
2 amount to be determined at trial and is entitled to the remedies provided for in 15
3 U.S.C. §1116 et seq.

4 89. To halt the ever-mounting injury to Marvel, Marvel hereby requests
5 that the Court issue temporary, preliminary and permanent injunctive relief,
6 restraining Defendants from further infringing or otherwise violating Marvel’s
7 intellectual property rights as herein described.

8 **EIGHTH CLAIM FOR RELIEF – CONTRIBUTORY TRADEMARK**

9 **INFRINGEMENT**

10 **15 U.S.C. §1125**

11 (Against All Defendants)

12 90. Marvel hereby incorporates the allegations contained in paragraphs 1
13 through 21 and 55 through 57, inclusive, as though set forth in full.

14 91. The City of Heroes Creation Engine enables Defendants’
15 customers/subscribers to identify their Heroes using names that violate Marvel’s
16 trademarks in the Marvel Characters. Indeed, Paragon City is rife with infringing
17 Heroes whose names are either identical to or slight variations on “Hulk,”
18 “Wolverine,” “Storm,” Captain America,” and countless other Marvel Characters.

19 92. Defendants know or should know that a significant number of their
20 180,000+ users are “creating” Heroes and assigning them names that directly
21 infringe upon Marvel’s trademarks. Defendants continuously and materially
22 contribute to their users’ direct infringement by, among other things, providing the
23 very tools by which users “create” their infringing Heroes and providing users with
24 the keys to Paragon City, the forum specifically created and serviced by Defendants
25 to facilitate game play. Indeed, because City of Heroes can only be played online
26 and only by way of Defendants’ servers, Defendants’ are or should be aware of each
27 and every infringing Hero that walks the streets of Paragon City. Without the
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1 Creation Engine and support services Defendants' provide, users could not "create"
2 their infringing Heroes in the first place.

3 93. The unauthorized use by Defendants' customers/subscribers of Marvel
4 trademarks and imitations thereof is likely to cause confusion, mistake, or deception,
5 in violation of 15 U.S.C. §1125. In addition, the use by Defendants'
6 customers/subscribers of names that are either identical to or imitations of Marvel
7 trademarks is likely to mislead and deceive the public into believing that City of
8 Heroes either originates, is endorsed by or is otherwise sanctioned by Marvel.
9 Defendants' contributory infringement of Marvel's trademarks, especially in
10 connection with a product so closely related to Marvel's core business, dilutes and
11 devalues Marvel's trademarks.

12 94. Defendants' have full knowledge of Marvel's trademark rights. As
13 such, Defendants' contributory infringement is willful.

14 95. Defendants' conduct has caused Marvel to suffer and, unless enjoined
15 by the Court, will cause Marvel to continue to suffer, damage to its operations,
16 reputation and goodwill including, but not limited to, damage to Marvel's core
17 business of licensing and merchandising the Marvel Characters.

18 96. By reason of Defendants' wrongful acts, Marvel has been injured in an
19 amount to be determined at trial and is entitled to the remedies provided for in 15
20 U.S.C. §1116 et seq.

21 97. To halt the ever-mounting injury to Marvel, Marvel hereby requests
22 that the Court issue temporary, preliminary and permanent injunctive relief,
23 restraining Defendants from further contributorily infringing or otherwise violating
24 Marvel's intellectual property rights as herein described.

1 **NINTH CLAIM FOR RELIEF – VICARIOUS TRADEMARK**
2 **INFRINGEMENT**

3 **15 U.S.C. §1125**

4 (Against All Defendants)

5 98. Marvel hereby incorporates the allegations contained in paragraphs 1
6 through 21 and 55 through 57, inclusive, as though set forth in full.

7 99. The City of Heroes Creation Engine enables Defendants’
8 customers/subscribers to identify their Heroes using names that violate Marvel’s
9 trademarks in the Marvel Characters. Indeed, Paragon City is rife with infringing
10 Heroes whose names are either identical to or slight variations on “Hulk,”
11 “Wolverine,” “Storm,” Captain America,” and countless other Marvel Characters.

12 100. By its very nature and design, Defendants’ City of Heroes game
13 induces, causes and materially contributes to the direct infringement of Marvel’s
14 trademarks. Considering that City of Heroes can only be played by way of
15 Defendants’ servers, Defendants have the absolute right and ability to supervise and
16 prevent users’ infringing activities. According to Defendants, more than 180,000+
17 users purchased City of Heroes in the first three months of its April 2004 release.
18 Also according to Defendants, each of those 180,000+ users pays Defendants
19 \$14.95 every month for the privilege of entering Paragon City. Defendants
20 therefore have a direct and significant financial interest in their users’ infringing
21 activities. Rather than fulfilling their obligation to police possible infringement to
22 the fullest extent possible, however, Marvel is informed and believes and based
23 thereon alleges that Defendants have turned a blind eye to their users’ readily
24 detectable acts of infringement.

25 101. Defendants know or should know that a significant number of their
26 180,000+ users are “creating” Heroes and assigning them names that directly
27 infringe upon Marvel’s trademarks. Defendants continuously and materially
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1 contribute to their users' direct infringement by, among other things, providing the
2 very tools by which users "create" their infringing Heroes and providing users with
3 the keys to Paragon City, the forum specifically created and serviced by Defendants
4 to facilitate game play. Indeed, because City of Heroes can only be played online
5 and only by way of Defendants' servers, Defendants' are or should be aware of each
6 and every infringing Hero that walks the streets of Paragon City. Without the
7 Creation Engine and support services Defendants' provide, users could not "create"
8 their infringing Heroes in the first place. Defendants therefore are vicariously liable
9 for any such infringement.

10 102. The unauthorized use by Defendants' customers/subscribers of Marvel
11 trademarks and imitations thereof is likely to cause confusion, mistake, or deception,
12 in violation of 15 U.S.C. §1125. In addition, the use by Defendants'
13 customers/subscribers of names that are either identical to or imitations of Marvel
14 trademarks is likely to mislead and deceive the public into believing that City of
15 Heroes either originates, is endorsed by or is otherwise sanctioned by Marvel.
16 Defendants' vicarious infringement of Marvel's trademarks, especially in
17 connection with a product so closely related to Marvel's core business, dilutes and
18 devalues Marvel's trademarks.

19 103. Defendants' have full knowledge of Marvel's trademark rights. As
20 such, Defendants' vicarious infringement is willful.

21 104. Defendants' conduct has caused Marvel to suffer and, unless enjoined
22 by the Court, will cause Marvel to continue to suffer, damage to its operations,
23 reputation and goodwill including, but not limited to, damage to Marvel's core
24 business of licensing and merchandising the Marvel Characters.

25 105. By reason of Defendants' wrongful acts, Marvel has been injured in an
26 amount to be determined at trial and is entitled to the remedies provided for in 15
27 U.S.C. §1116 et seq.

1 106. To halt the ever-mounting injury to Marvel, Marvel hereby requests
2 that the Court issue temporary, preliminary and permanent injunctive relief,
3 restraining Defendants from further vicariously infringing or otherwise violating
4 Marvel's intellectual property rights as herein described.

5 **TENTH CLAIM FOR RELIEF – INTENTIONAL INTERFERENCE WITH**
6 **ACTUAL AND PROSPECTIVE ECONOMIC ADVANTAGE**

7 (Against All Defendants)

8 107. Marvel hereby incorporates the allegations contained in paragraphs 1
9 through 21, inclusive, as though set forth in full.

10 108. Defendants knew or should have known that licensing and
11 merchandising the Marvel Characters is Marvel's core business. Despite this
12 knowledge, Defendants have acted in a manner designed to disrupt Marvel's
13 existing and future business relationships as regards the licensing and merchandising
14 of the Marvel Characters including, but not limited to, the licensing of the Marvel
15 Characters for use in video/computer games similar to City of Heroes.

16 109. Marvel currently has licensing agreements with Universal and
17 Activision for the authorized use of the Marvel Characters in the video/computer
18 game market. Defendants knew or should have known that their wrongful acts of
19 copyright and trademark infringement as described hereinabove would substantially
20 interfere with Marvel's existing and prospective agreements for the licensing and
21 merchandising of the Marvel Characters.

22 110. By their unsanctioned conduct, Defendants have interfered and, unless
23 enjoined by the Court, will continue to interfere with Marvel's existing and
24 prospective business relationships by misappropriating and/or diminishing the value
25 of Marvel's intellectual property rights in and to the Marvel Characters.

26 111. As a direct and proximate result of Defendants' tortious conduct as
27 described hereinabove, Marvel has been injured in an amount to be proven at trial.
28

1 112. Defendants wrongful acts as described hereinabove were willful,
2 wanton, malicious and oppressive and justify the award of exemplary and punitive
3 damages in an amount to be proven at trial.

4 113. To halt the ever-mounting injury, Marvel hereby requests that the Court
5 issue temporary, preliminary and permanent injunctive relief, restraining Defendants
6 from further tortiously interfering with Marvel's existing and prospective business
7 relationships.

8 **ELEVENTH CLAIM FOR RELIEF – UNFAIR COMPETITION IN**
9 **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 et seq.**

10 (Against All Defendants)

11 114. Marvel hereby incorporates the allegations contained in paragraphs 1
12 through 111, inclusive, as though set forth in full.

13 115. Defendants' infringement of Marvel's intellectual property rights and
14 intentional interference with Marvel's business relationships, as described
15 hereinabove, constitute unlawful, unfair, unethical, oppressive and deceptive
16 business practices under California Business & Professions Code §§ 17200 et seq.

17 116. As a direct and proximate result of Defendants' unfair business
18 practices as described hereinabove, Marvel has been injured in an amount to be
19 proven at trial.

20 117. To halt the ever-mounting injury, Marvel hereby requests that the Court
21 issue temporary, preliminary and permanent injunctive relief, restraining Defendants
22 from further infringing on Marvel's intellectual property rights or interfering with
23 Marvel's existing and prospective business relationships.

1 **TWELFTH CLAIM FOR RELIEF – CALIFORNIA COMMON LAW**

2 **UNFAIR COMPETITION**

3 (Against All Defendants)

4 118. Marvel hereby incorporates the allegations contained in paragraphs 1
5 through 111, inclusive, as though set forth in full.

6 119. Defendants’ infringement of Marvel’s intellectual property rights and
7 intentional interference with Marvel’s business relationships, as described
8 hereinabove, constitute common law unfair competition.

9 120. As a direct and proximate result of Defendants’ unfair business
10 practices as described hereinabove, Marvel has been injured in an amount to be
11 proven at trial.

12 121. Defendants’ acts alleged above were willful, wanton, malicious and
13 oppressive and justify the award of exemplary and punitive damages in an amount
14 to be determined at trial.

15 122. To halt the ever-mounting injury, Marvel hereby requests that the Court
16 issue temporary, preliminary and permanent injunctive relief, restraining Defendants
17 from further infringing on Marvel’s intellectual property rights or interfering with
18 Marvel’s existing and prospective business relationships.

19 **THIRTEENTH CLAIM FOR RELIEF – DECLARATORY RELIEF**

20 (Against All Defendants)

21 123. Marvel hereby incorporates the allegations contained in paragraphs 1
22 through 21, inclusive, as though set forth in full.

23 124. A dispute and actual controversy has arisen between Marvel, on the one
24 hand, and Defendants, on the other hand, in that Defendants contend that they
25 qualify as an internet service provider (“ISP”) and are shielded from liability for
26 copyright infringement by the “safe harbor” provision of the Digital Millennium
27 Copyright Act (“DMCA”), codified at 17 U.S.C. §512. Marvel contends that
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1 Defendants do not qualify as an ISP and that, even if they do, they do not qualify
2 under the “safe harbor” provision of the DMCA.

3 125. Marvel desires a judicial declaration as to whether Defendants qualify
4 as an ISP under the DMCA and as to whether Defendants are in any way shielded
5 from liability for copyright infringement under the DMCA’s “safe harbor”
6 provision. Such declarations are necessary and appropriate so that both parties may
7 better ascertain their respective rights and responsibilities under the DMCA and to
8 promote judicial efficiency. For the same reasons, Marvel desires a prompt
9 resolution of the issues herein.
10

11 WHEREFORE, Marvel prays for judgment against Defendants, and each of
12 them, as follows:

13 **On the First Claim for Relief**

- 14 1. For Marvel and against Defendants on the first claim for copyright
15 infringement;
- 16 2. For an injunction ordering Defendants to cease engaging in any and all
17 infringement of Marvel’s copyrights in and to the Marvel Characters;
- 18 3. For such damages as Marvel has sustained as a result of Defendants’
19 infringement of Marvel’s copyrights in and to the Marvel Characters including, but
20 not limited to, any and all profits gained by Defendants as a result of their infringing
21 activities or, if appropriate pursuant to federal copyright law, for any and all
22 damages provided for by statute; and
- 23 4. For costs of suit and attorneys’ fees incurred herein.

24 **On the Second Claim for Relief**

- 25 1. For Marvel and against Defendants on the second claim for
26 contributory copyright infringement;

1 2. For an injunction ordering Defendants to cease engaging in any and all
2 contributory infringement of Marvel’s copyrights in and to the Marvel Characters;

3 3. For such damages as Marvel has sustained as a result of Defendants’
4 contributory infringement of Marvel’s copyrights in and to the Marvel Characters
5 including, but not limited to, any and all profits gained by Defendants as a result of
6 their infringing activities or, if appropriate pursuant to federal copyright law, for any
7 and all damages provided for by statute; and

8 4. For costs of suit and attorneys’ fees incurred herein.

9 **On the Third Claim for Relief**

10 1. For Marvel and against Defendants on the third claim for vicarious
11 copyright infringement;

12 2. For an injunction ordering Defendants to cease engaging in any and all
13 vicarious infringement of Marvel’s copyrights in and to the Marvel Characters;

14 3. For such damages as Marvel has sustained as a result of Defendants’
15 vicarious infringement of Marvel’s copyrights in and to the Marvel Characters
16 including, but not limited to, any and all profits gained by Defendants as a result of
17 their infringing activities or, if appropriate pursuant to federal copyright law, for any
18 and all damages provided for by statute; and

19 4. For costs of suit and attorneys’ fees incurred herein.

20 **On the Fourth Claim for Relief**

21 1. For Marvel and against Defendants on the fourth claim for violation of
22 15 U.S.C. §1114(1)(a) in an amount to be proven at trial;

23 2. For an injunction ordering Defendants to cease engaging in any and all
24 infringement of Marvel’s trademarks; and

25 3. For costs of suit and attorneys’ fees incurred herein.

1 **On the Fifth Claim for Relief**

- 2 1. For Marvel and against Defendants on the fifth claim for violation of
3 15 U.S.C. §1114(1)(a) in an amount to be proven at trial;
4 2. For an injunction ordering Defendants to cease engaging in any and all
5 contributory infringement of Marvel’s trademarks; and
6 3. For costs of suit and attorneys’ fees incurred herein.

7 **On the Sixth Claim for Relief**

- 8 1. For Marvel and against Defendants on the sixth claim for violation of
9 15 U.S.C. §1114(1)(a) in an amount to be proven at trial;
10 2. For an injunction ordering Defendants to cease engaging in any and all
11 vicarious infringement of Marvel’s trademarks; and
12 3. For costs of suit and attorneys’ fees incurred herein.

13 **On the Seventh Claim for Relief**

- 14 1. For Marvel and against Defendants on the seventh claim for violation
15 of 15 U.S.C. §1125(a) in an amount to be proven at trial;
16 2. For an injunction ordering Defendants to cease engaging in any and all
17 infringement of Marvel’s trademarks;
18 3. For three times the amount of damages that Marvel has sustained as a
19 result of Defendants’ violation of 15 U.S.C. §1125(a);
20 4. For an order requiring Defendants to deliver for destruction any and all
21 products or other physical items in Defendants’ possession that infringe upon
22 Marvel’s trademarks; and
23 5. For costs of suit and attorneys’ fees incurred herein.

24 **On the Eighth Claim for Relief**

- 25 1. For Marvel and against Defendants on the eighth claim for violation of
26 15 U.S.C. §1125(a) in an amount to be proven at trial;
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1 2. For an injunction ordering Defendants to cease engaging in any and all
2 contributory infringement of Marvel’s trademarks;

3 3. For three times the amount of damages that Marvel has sustained as a
4 result of Defendants’ violation of 15 U.S.C. §1125(a);

5 4. For an order requiring Defendants to deliver for destruction any and all
6 products or other physical items in Defendants’ possession that infringe upon
7 Marvel’s trademarks; and

8 5. For costs of suit and attorneys’ fees incurred herein.

9 **On the Ninth Claim for Relief**

10 1. For Marvel and against Defendants on the fourth claim for violation of
11 15 U.S.C. §1125(a) in an amount to be proven at trial;

12 2. For an injunction ordering Defendants to cease engaging in any and all
13 vicarious infringement of Marvel’s trademarks;

14 3. For three times the amount of damages that Marvel has sustained as a
15 result of Defendants’ violation of 15 U.S.C. §1125(a);

16 4. For an order requiring Defendants to deliver for destruction any and all
17 products or other physical items in Defendants’ possession that infringe upon
18 Marvel’s trademarks; and

19 5. For costs of suit and attorneys’ fees incurred herein.

20 **On the Tenth Claim for Relief**

21 1. For Marvel and against Defendants on the tenth claim for relief for
22 intentional interference with actual and prospective economic advantage;

23 2. For such damages as Marvel has sustained as a result of Defendants’
24 intentional interference with actual and prospective economic advantage, in an
25 amount to be proven at trial;

1 3. For an injunction ordering Defendants to cease infringing on Marvel's
2 intellectual property rights or otherwise interfering with Marvel's existing and
3 prospective business relationships;

4 4. For exemplary and punitive damages in an amount to be determine at
5 trial; and

6 5. For costs of suit.

7 **On the Eleventh Claim for Relief**

8 1. For Marvel and against Defendants on the eleventh claim for relief for
9 unfair competition in violation of California Business & Professions Code §§17200
10 et seq.;

11 2. For an injunction ordering Defendants to cease engaging in any and all
12 unfair competition with respect to Marvel's intellectual property rights and Marvel's
13 existing and prospective business relationships;

14 3. For an order disgorging Defendants from all profits gained by
15 Defendants as a result of Defendants acts of unfair competition in violation of
16 California Business & Professions Code §§17200 et seq.; and

17 4. For costs of suit and attorneys' fees incurred herein.

18 **On the Twelfth Claim for Relief**

19 1. For Marvel and against Defendants on the twelfth claim for relief for
20 California common law unfair competition;

21 2. For an injunction ordering Defendants to cease engaging in any and all
22 common law unfair competition with respect to Marvel's intellectual property rights
23 and Marvel's existing and prospective business relationships;

24 3. For such damages as Marvel has sustained as a result of Defendants'
25 acts of common law unfair competition, in an amount to be proven at trial;

26 4. For exemplary and punitive damages in an amount to be determined at
27 trial; and

1 5. For costs of suit and attorneys' fees incurred herein.

2 **On the Thirteenth Claim for Relief**

3 1. For a declaration that Defendants do not qualify as an ISP under the
4 DMCA and are not shielded from liability for copyright infringement under the
5 DMCA's "safe harbor" provision.

6 **On all Claims for Relief**

- 7 1. For reasonable attorneys' fees;
8 2. For costs of suit incurred herein;
9 3. For interest thereon; and
10 4. For such other and further relief as the Court deems just and proper.

11
12 Dated: November 10, 2004

THELEN REID & PRIEST LLP

13
14 By 

15 Carole E. Handler
16 John L. Tuell
17 Attorneys for Plaintiffs
MARVEL ENTERPRISES, INC. and
MARVEL CHARACTERS, INC.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiffs Marvel Enterprises, Inc. and Marvel Characters, Inc. hereby demand
20 a trial by jury.

21
22 Dated: November 10, 2004

THELEN REID & PRIEST LLP

23
24 By 

25 Carole E. Handler
26 John L. Tuell
27 Attorneys for Plaintiffs
MARVEL ENTERPRISES, INC. and
MARVEL CHARACTERS, INC.