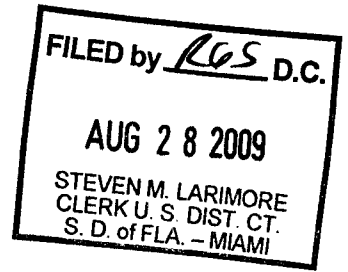


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FORT LAUDERDALE DIVISION



09-61356

TMR MULTIMEDIA, INC.,

Plaintiff,

Case No. _____

v.

THE PHD NETWORK, B.B.D.O. a/k/a BATTEN,
BURTON, DURSTEIN and OSBORN, and JOHN
DOE(S) I-IX, individual(s),

Defendants.

CIV-COHN

MAGISTRATE JUDGE
SELTZER

DEFENDANTS' NOTICE OF REMOVAL

Defendants PHD Multimedia L.L.C., incorrectly identified in the Complaint as The PHD Network, and BBDO Worldwide Inc., incorrectly identified in the Complaint as B.B.D.O. a/k/a Batten, Burton, Durstein and Osborn, (together, "Defendants"), file their Notice of Removal to the United States District Court for the Southern District of Florida, Fort Lauderdale Division, of the above cause originally filed in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, where such cause is now pending under Case No. 09042200 (the "State Court Action"). In support of removal, Defendants state as follows:

1. The State Court Action was commenced by Plaintiff's filing of a complaint in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida on July 30, 2009 (the "Complaint") and service of the Complaint on Defendant PHD on or about August 5, 2009 and on Defendant BBDO on or about August 14, 2009. The Complaint asserts claims for (I) Idea Misappropriation; (II) Unjust Enrichment; (III) Breach of Implied

in Fact Contract; (IV) Civil Conspiracy; (V) Theft of Trade Secrets; (VI) Fraudulent Misrepresentation; (VII) Constructive Fraud; and (VIII) Civil Theft. The Complaint seeks damages, plus statutory interest, attorneys' fees, and costs.

GROUND FOR REMOVAL

2. This Court has original jurisdiction over this action under 28 U.S.C. § 1332, and this action is removable under 28 U.S.C. § 1441, in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

DIVERSITY OF CITIZENSHIP

3. For purposes of diversity jurisdiction, a corporation is "deemed to be a citizen of any State by which it has been incorporated and of the State in which it has its principal place of business". 28 U.S.C. § 1332(c)(1).

4. According to the Complaint, Plaintiff TMR Multimedia, Inc. ("TMR") is, and at all relevant times has been, a Florida corporation with its principal place of business in Broward County, Florida. (Compl. ¶ 2).

5. Defendant PHD is, at the time of the filing of this Notice of Removal, and was at the time of the commencement of the State Court Action, a Delaware Limited Liability Company, with its principal place of business in New York, New York. Defendant BBDO is, at the time of the filing of this Notice of Removal, and was at the time of the commencement of the State Court Action, a corporation organized and existing under the laws of the State of New York, with its principal place of business in New York, New York.

6. Accordingly, complete diversity exists between Plaintiff and Defendants. 28 U.S.C. § 1332(a)(1).

JURISDICTIONAL AMOUNT

7. As set forth in Count VIII of the Complaint, Plaintiff seeks damages in the amount of three times its alleged actual damages, or fifteen million dollars, or in the alternative, a minimum of five million dollars (Compl. ¶ 183).

8. Plaintiff also seeks damages in excess of fifteen thousand dollars for each of the remaining seven counts in the Complaint, as well as statutory interest, attorneys' fees and costs.

9. Accordingly, the \$75,000.00 amount-in-controversy requirement for diversity jurisdiction under 28 U.S.C. § 1332(a) is satisfied.

CONCLUSION

10. Based on the above, Defendants have met their burden in establishing that this Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(a) and 28 U.S.C. § 1332(c). This action is one which may be removed to this Court by Defendants pursuant to 28 U.S.C. § 1441, in that there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

11. Furthermore, because Defendants are filing this Notice of Removal within thirty (30) days after the August 5, 2009 service of the Complaint on PHD, the Notice of Removal is timely filed under 28 U.S.C. § 1446(b).

12. Pursuant to 28 U.S.C. § 1446(a), Defendants attach as Exhibit A a copy of all process, pleadings and orders served upon them in the State Court Action. Additionally, pursuant to 28 U.S.C. § 1446(d), concurrent with the filing of this Notice of Removal, Defendants are giving written notice of the Notice of Removal to the Circuit Court of Broward County, Florida, and to the Plaintiff.

13. By filing the instant Notice of Removal, Defendants do not waive, and fully reserve, all defenses they may have, including but not limited to defenses of lack of personal jurisdiction, lack of subject matter jurisdiction, and failure to state a claim upon which relief may be granted.

WHEREFORE, Defendants respectfully request that the action pending in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, Case No. 09042200, be removed to the United States District Court for the Southern District of Florida, Fort Lauderdale Division.

Respectfully submitted this 28th day of August, 2009.

CARLTON FIELDS, P.A.
Attorneys for Defendants
4000 International Place
100 S.E. Second Street
Miami, Florida 33131-2114
Telephone No.: (305) 530-0050
Facsimile No.: (305) 530-0055

By: 

PATRICIA H. THOMPSON, ESQ.
pthompson@carltonfields.com

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Mail on this 28th day of August, 2009, to Robin Sommers and Satyen Gandhi, The Tickin Law Group, P.A., *Attorneys for Plaintiff*, 600 W. Hillsboro Blvd., Suite 220, Deerfield Beach, Florida 33441.

CARLTON FIELDS, P.A.
Attorneys for Defendants
4000 International Place
100 S.E. Second Street
Miami, Florida 33131-2114
Telephone No.: (305) 530-0050
Facsimile No.: (305) 530-0055

By: 

PATRICIA H. THOMPSON, ESQ.
pthompson@carltonfields.com

Exhibit “A”

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.:

TMR MULTIMEDIA, INC.,

Plaintiff,

v.

PHD Media Service 8/4
Net Service
THE PHD NETWORK, B.B.D.O. a/k/a
BATTEN, BURTON, DURSTINE and OSBORN,
and JOHN DOE(S) I-IX, individual(s)

Defendants.

SUMMONS

Vassallo #1157
SUMMONS: PERSONAL SERVICE ON AN INDIVIDUAL
ORDEN DE COMPARECENCIA: SERVICIO PERSONAL EN UN INDIVIDUO
CITATION: L'ASSIGNATION PERSONAL SUR UN INDIVIDUEL

TO/PARA/A: The PHD Network
c/o Registered Agent
6205 Blue Lagoon Drive, Suite 650
Miami, Florida 33126

IMPORTANT

A lawsuit has been filed against you. You have **20 calendar days** after this summons is served on you to file a written response to the attached complaint/petition with the clerk of this county court, located at: 201 South East 6th Street, Fort Lauderdale, Florida 33301. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be **filed** if you want the Court to hear your side of the case.

If you do not file your written response on time, you may lose the case, and your wages, money, and property may be taken thereafter without further warning from the Court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

If you choose to file a written response yourself, at the same time you file your written response to the Court, you must also mail or take a copy of your written response to the party serving this summons:

ROBIN J. SOMMERS, ESQUIRE
THE TICKTIN LAW GROUP, P.A.
600 West Hillsboro Boulevard
Suite 220
Deerfield Beach, Florida 33441-1610
(954) 570-6757

Copies of all court documents in this case, including orders, are available at the Clerk of the Circuit Court's office. You may review these documents, upon request.

You must keep the Clerk of the Circuit Court's office notified of your current address. (You may file Notice of Current Address, Florida Family Law Form 12.915.) Future papers in this lawsuit will be mailed to the address on record at the clerk's office.

WARNING: Rule 12.285, Florida Family Law Rules of Procedure, requires certain automatic disclosure of documents and information. Failure to comply can result in sanctions, including dismissal or striking of pleadings.

IMPORTANTE

Usted ha sido demandado legalmente. Tiene veinte (20) días, contados a partir del recibo de esta notificación, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Localizado en: 201 South East 6th Street, Fort Lauderdale, Florida 33301. Una llamada telefónica no lo protegerá. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el número del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podría ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, usted puede consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guía telefónica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presente su respuesta ante el tribunal, usted debe enviar por correo o entregar una copia de su respuesta a la persona denominada abajo.

Si usted elige presentar personalmente una respuesta por escrito, en el mismo momento que usted presente su respuesta por escrito al Tribunal, usted debe enviar por correo o llevar una copia de su respuesta por escrito a la parte entregando esta orden de comparecencia a:

Nombre y dirección de la parte que entrega la orden de comparecencia:

Copias de todos los documentos judiciales de este caso, incluyendo las ordenes, están disponibles en la oficina del Secretario de Juzgado del Circuito [Clerk of the Circuit Court's office]. Estos documentos pueden ser revisados a su solicitud.

Usted debe de mantener informada a la oficina del Secretario de Juzgado del Condado de su dirección actual. (Usted puede presentar _____ el Formulario: Ley de Familia de la Florida 12.915, [Florida Family Law Form 12.915], Notificación de la

Direccion Actual [Notice of Current Address].) Los papeles que se presenten en el futuro en esta demanda judicial seran enviados por correo a la direccion que este registrada en la oficina del Secretario.

ADVERTENCIA: Regla 12.285 (Rule 12.285), de las Reglas de Procedimiento de Ley de Familia de la Florida [Florida Family Law Rules of Procedure], requiere cierta revelacion automatica de documentos e informacion. El incumplimiento, puede resultar en sanciones, incluyendo la desestimacion o anulacion de los alegatos.

IMPORTANT

Des poursuites judiciaires ont ete entreprises contre vous. Vous avez 20 jours consecutifs a partir de la date de l'assignation de cette citation pour déposer une reponse ecrite a la plainte ci-jointe aupres de ce tribunal. Qui se trouve a: 201 South East 6th Street, Fort Lauderdale, Florida 33301. Un simple coup de telephone est insuffisant pour vous proteger; vous etes obliges de déposer votre reponse ecrite, avec mention du numero de dossier ci-dessus et du nom des parties nommees ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne deposez pas votre reponse ecrite dans le delai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent etre saisis par la suite, sans aucun preavis ulterieur du tribunal. Il y a d'autres obligations juridiques et vous pouvez requerir les services immediats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez telephoner a un service de reference d'avocats ou a un bureau d'assistance juridique (figurant a l'annuaire de telephones).

Si vous choisissez de déposer vous-meme une reponse ecrite, il vous faudra egalement, en meme temps que cette formalite, faire parvenir ou expedier une copie au carbone ou une photocopie de votre reponse ecrite a la partie qui vous depose cette citation.

Nom et adresse de la partie qui depose cette citation:

Les photocopies de tous les documents tribunaux de cette cause, y compris des arrêts, sont disponibles au bureau du greffier. Vous pouvez revue ces documents, sur demande.

Il faut aviser le greffier de votre adresse actuelle. (Vous pouvez déposer Florida Family Law Form 12.915, Notice of Current Address.) Les documents de l'avenir de ce proces seront envoyer a l'adresse que vous donnez au bureau du greffier.

ATTENTION: La regle 12.285 des regles de procedure du droit de la famille de la Floride exige que l'on remette certains renseignements et certains documents à la partie adverse. Tout refus de les fournir pourra donner lieu a des sanctions, y compris le rejet ou la suppression d'un ou de plusieurs actes de procedure.

THE STATE OF FLORIDA:

TO EACH SHERIFF OF THE STATE: You are commanded to serve this summons and a copy of the complaint in this lawsuit on the above-named person.

DATED: _____

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.:

09042200

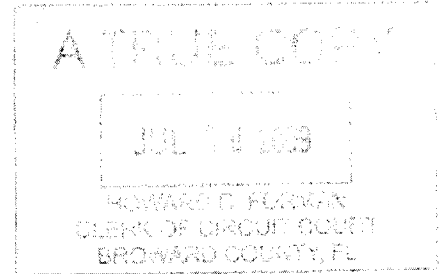
TMR MULTIMEDIA INC.,

Plaintiff,

v.

THE PHD NETWORK, B.B.D.O. a/k/a
BATTEN, BURTON, DURSTINE and OSBORN,
and JOHN DOE(S) I-IX, individual(s)

Defendants.



COMPLAINT AND DEMAND FOR JURY TRIAL

The Plaintiff, TMR MULTIMEDIA INC., by and through its undersigned attorneys, hereby brings suit against THE PHD NETWORK, B.B.D.O a/k/a BATTEN, BURTON, DURSTINE, and OSBORN, and JOHN DOE(S), individual(s), and states:

1. This is an action for damages in excess of \$15,000.00 exclusive of interest, costs, and attorneys' fees.

THE PARTIES

2. The Plaintiff, TOTAL MARKET RESOURCES MULTIMEDIA, INC., does business as TMR MULTIMEDIA (hereinafter "TOTAL"), is a Florida Corporation, and is an advertising, marketing, public relations, and television production company that creates novel advertising ideas and campaigns.

3. The Defendant THE PHD NETWORK (hereinafter "PHD") is a media buying and planning agency for Chrysler, a corporation that manufacturers, designs, and sells automobiles and trucks.

*Answer Due
8-24-09*

4. The Defendant B.B.D.O. a/k/a BATTEN, BURTON, DURSTINE, and OSBORN, (hereinafter "BBDO") is a media buying and planning agency for Chrysler and Dodge, who rely on BBDO to analyze, evaluate, and make recommendations on all media-related advertising projects.

5. The Defendants, PHD and BBDO, are both owned by the same parent corporation, Omnicom Group, Inc., and do business together on many media campaigns, projects, and other client accounts, including those that are the subject of this Complaint.

6. The Defendant(s), JOHN DOE(S) I-IX, upon information and belief, is an/are individual(s), and/or employee(s) of PHD or BBDO, and was/were heavily involved with the subject matter of this Complaint.

JURISDICTION AND VENUE

7. TOTAL is a Florida Corporation with its principal place of business located in Broward County, Florida, and is otherwise *sui juris*.

8. The Defendant PHD has at least one office in Florida, located at 6205 Blue Lagoon Drive, Suite 650, Miami, Florida 33126.

9. At all times relevant hereto, PHD has operated, conducted, engaged in, and/or otherwise carried on a business or business ventures within the State of Florida.

10. PHD has committed tortious acts within the State of Florida.

11. PHD has caused injury to TOTAL within the State of Florida by means of acts or omissions committed inside and outside the State of Florida, while PHD was actively engaged in commerce within the State of Florida.

12. At all times relevant hereto, PHD has been engaged in substantial,

continuous, and systematic activities within the State of Florida, and has purposefully availed itself of the privilege of conducting business activities within the State of Florida and of the laws of the State of Florida.

13. Accordingly, Florida courts have personal and subject-matter jurisdiction over the Defendant PHD.

14. The Defendant BBDO has at least one office in Florida, located at 2 Alhambra Place, Suite 600, Miami, Florida 33134.

15. At all times relevant hereto, BBDO has operated, conducted, engaged in, and/or otherwise carried on a business or business ventures within the State of Florida.

16. BBDO has committed tortious acts within the State of Florida.

17. BBDO has caused injury to TOTAL within the State of Florida by means of acts or omissions committed inside and outside the State of Florida, while BBDO was actively engaged in commerce within the State of Florida.

18. At all times relevant hereto, BBDO has been engaged in substantial, continuous, and systematic activities within the State of Florida, and has purposefully availed itself of the privilege of conducting business activities within the State of Florida and of the laws of the State of Florida.

19. Accordingly, Florida courts have personal and subject-matter jurisdiction over the Defendant BBDO.

20. The Defendant(s), JOHN DOE(S) I-IX, upon information and belief, does/do business and is/are doing business within the State of Florida, and accordingly, Florida courts have personal and subject-matter jurisdiction over the Defendant(s) JOHN DOE(S)

I-IX.

21. Venue is proper in Broward County, Florida, pursuant to Chapter 47, Florida Statutes, as the actions which give rise to TOTAL's causes of action against the Defendants accrued in Broward County, Florida.

STATEMENT OF THE FACTS

22. This matter arises from the improvident actions of the Defendants: large media agencies that recognized the value of the ideas of a small, creative, marketing company with a big vision.

23. The Defendants wanted to use those ideas without giving anything in return. And so they stole the ideas and passed them off as their own.

24. The Plaintiff, TOTAL, is a small marketing company with a big creative vision.

25. In 1997, TOTAL developed and implemented a strategy to create, execute, and sell branded entertainment television projects to large corporations across America.

26. When TOTAL first conceived of its idea, it was ahead of its time.

27. TOTAL was at that early stage a visionary company in that it was among the first to significantly further the blurring of the line between advertising and entertainment, laying the foundation for what today is known as *advertainment*.

28. TOTAL had developed a novel idea: a first of its kind, branded entertainment program for television, featuring different products in real-life long-form competition, which would provide unparalleled brand-building opportunities.

29. However, TOTAL decided to defer initiating this novel, unique, and unconventional idea until the available technology and market conditions were more

favorable.

30. Finally, in 2007, the time became right for TOTAL to present its idea, as TOTAL had determined that the market was finally ready for its novel brand of *advertainment*.

31. Consequently, on May 19, 2008, TOTAL approached Chrysler to propose an offer for a branded television show it had created for Chrysler, entitled "Let it Ride."

32. TOTAL had created a website which featured a presentation for "Let it Ride." The presentation for "Let it Ride" consisted of a video show accompanied by high-energy music, which also demonstrated Chrysler's vehicles in action.

33. When TOTAL approached Chrysler about its idea, Chrysler was so impressed with the idea that Chrysler engaged the Defendants to evaluate it.

34. At Chrysler's urging, TOTAL contacted the Defendants to showcase its ideas, and as a result, over a period of many weeks, the Defendants eagerly and actively sought out all of the details pertaining to TOTAL's vision and ideas.

35. With the parties communicating extensively regarding the purchase of TOTAL's novel idea, and as the parties were on the brink of memorializing their agreement, the Defendants astonishingly purported to spurn any deal with TOTAL.

36. While TOTAL believed that a deal was imminent, the Defendants instead conspired and misappropriated TOTAL's valuable property for their own ill-gotten commercial gain.

37. The Defendants appropriated TOTAL's ideas almost verbatim and have presented TOTAL's ideas as their own.

38. The Defendants converted TOTAL's ideas into a media campaign for Dodge's Dodge Ram truck series for 2009, which is exactly what TOTAL thought it would do.

39. The media campaign was described as "a game changing marketing launch ... a first-of-its-kind, long-form reality competition; innovative brand integrations and unique partnerships with three key networks" in the form of the "Dodge Ram Challenge." (From *The Scoop*, an internal Chrysler information system, on September 18, 2008).

40. And in a later follow-up article in the same internal publication, Chrysler stated similarly that this new concept is "a game-changing marketing launch that connects with consumers through new forms of content, new distribution channels and targeting tools." (*The Scoop*, October 10, 2008).

41. These "new forms of content, new distribution channels and targeting tools" were not the brainchild of PHD, BBDO, or its cohorts, as they might attempt to have one believe. To the contrary, this new marketing concept was the result of years of hard work by TOTAL and its principals.

42. On May 31, 2008, Arlene Janks, Chrysler's Senior Manager, Media Marketing Mix, contacted TOTAL and requested it contact her.

43. On June 3, 2008, TOTAL spoke with Janks. Janks explained to TOTAL that it would be necessary for TOTAL to contact PHD, as Chrysler relied on PHD to analyze, evaluate, and make recommendations on all media-related projects.

44. Janks then referred TOTAL to PHD employees, Lori Hiltz ("HILTZ") and Cindy Marshall ("MARSHALL").

45. On June 3, 2008, TOTAL contacted PHD, by sending an email to HILTZ and MARSHALL, and informed them of the offer it had regarding "Let it Ride." TOTAL also sent HILTZ and MARSHALL the link to the website presentation for "Let it Ride."

46. On June 12, 2008, TOTAL spoke with MARSHALL regarding "Let it Ride." MARSHALL represented to TOTAL that although PHD was interested in TOTAL's idea, Chrysler did not have the budget for "Let it Ride".

47. Instead, MARSHALL further represented to TOTAL that Chrysler was more focused on the Dodge Ram truck series for 2009.

48. TOTAL then asked MARSHALL if TOTAL should instead develop a new idea for the Dodge Ram truck series for 2009, and MARSHALL thereupon agreed that TOTAL should.

49. After this discussion, and based on PHD's disclosure of Chrysler's budget and stated objectives to TOTAL, TOTAL immediately created a new show featuring the 2009 Dodge Ram truck, called "Pulling for America."

50. "Pulling for America" was a novel idea for a reality competition television show starring the 2009 Dodge Ram trucks in which "real-life" truck buyers would drive the trucks in a competitive race, while performing physical tasks highlighting the toughness and durability of the trucks.

51. The novel features created by TOTAL for its "Pulling for America" show included, but were not limited to:

- (a) A first of its kind, long-form reality challenge;
- (b) Using real truck buyers, including "heroes" and "American icons,"

- recruited from around the country;
- (c) Competing in a race with each other;
 - (d) On a course;
 - (e) Designed to demonstrate the toughness and capabilities of the 2009 Dodge Ram trucks;
 - (f) Showing the 2009 Dodge Ram trucks as they would be used in "real-life;"
 - (g) With a grand prize to be awarded to the winner.

52. The proposal for "Pulling for America" was only at this point a presentation of TOTAL's ideas and concepts. The presentation was part of TOTAL's offer to the Defendants.

53. On June 13, 2008, and predicated upon TOTAL's discussion with MARSHALL on June 12, 2008, TOTAL contacted MARSHALL with an offer regarding "Pulling for America." TOTAL referred MARSHALL to a link to a website TOTAL had created where its presentation regarding "Pulling for America" could be viewed.

54. The presentation for "Pulling for America" also provided PHD with several options related to the acceptance of TOTAL's offer, including investing in licensing, payments for production and/or services, directing advertising dollars toward purchasing advertising spots on "Pulling for America," and/or a cash investment to offset ongoing production costs.

55. At all times material hereto, it was understood impliedly and expressly, by the conduct of the parties and by then-prevailing industry standards, that TOTAL would be

compensated for the use of its ideas and concepts related to "Pulling for America."

56. On June 19, 2008, TOTAL contacted PHD employee Wendy Codd ("CODD") regarding its offer for "Pulling for America."

57. On June 23, 2008, TOTAL received a rejection email from Chrysler employee Jennifer Maren ("MAREN") on behalf of Chrysler regarding TOTAL's offer for "Pulling for America."

58. MAREN informed TOTAL that PHD had evaluated TOTAL's presentation for "Pulling for America," including the information TOTAL sent regarding participation and acceptance of the offer, but that PHD was not interested.

59. On June 27, 2008, and despite the Defendants' previous rejection of TOTAL's offer for both "Let it Ride" and "Pulling for America," CODD initiated contact with TOTAL.

60. CODD requested TOTAL forward to her all relevant information TOTAL had relative to its offer for "Let it Ride."

61. TOTAL now understood that it was getting a second chance: that is, another opportunity for its offer to be accepted, and so TOTAL forwarded its information to CODD on June 29, 2008.

62. Between July 2, 2008 and July 29, 2008, the Defendants, including PHD employee Monique Horrevorts ("HORREVORTS"), PHD employee Jaemilyn Bernal ("BERNAL"), and CODD, continually and repeatedly contacted TOTAL a significant number of times, requesting specific and detailed information regarding pricing and placement for "Let it Ride," including requests for actual numbers considered by TOTAL, including but not

limited to estimated impressions, timing, and all other qualitative and quantitative data TOTAL had regarding "Let it Ride."

63. The specific information regarding pricing and placement for "Let it Ride," including requests for actual numbers, estimated impressions, timing, and all other quantitative data possessed by TOTAL and regarding "Let it Ride" equally applied to "Pulling for America."

64. For instance, on July 22, 2008, BERNAL contacted TOTAL and requested a "breakdown of information as far as an estimate on pricing, how long the show will air, etc," so that she could create a Point of View, or "POV," which is a report with recommendations regarding TOTAL's proposal to the Defendants.

65. After receiving the information from TOTAL to complete the "POV" Report and Recommendations, CODD informed TOTAL in a teleconference that PHD had actually "green-lighted" TOTAL's offer, meaning that it recommended that TOTAL's offer be accepted.

66. As a result of these inquiries from the Defendants regarding specific detailed information, TOTAL was under the reasonable impression that the Defendants were now ready to move forward with accepting TOTAL's offer, and justifiably relied on the Defendants' renewed representations, despite the Defendants' prior rejection of the offer.

67. On July 29, 2008, and further to the request of CODD and BERNAL, TOTAL informed PHD of the exact manner and amount in which it expected to be compensated as its offer was, by all indications, about to be accepted.

68. Further, in July 2008, BBDO employee Marni Fruman ("FRUMAN"), called

TOTAL.

69. By all indications, BBDO and PHD routinely work in tandem in analyzing, evaluating, and making recommendations on all media campaigns and media-related projects for Chrysler and Dodge.

70. Additionally, BBDO's involvement in media campaigns and media-related projects for Chrysler and Dodge was just as paramount and necessary as PHD's involvement.

71. Accordingly, FRUMAN called TOTAL in July 2008 to request specific information regarding the media costs associated with both "Let it Ride" and "Pulling for America."

72. In this teleconference, TOTAL disclosed to FRUMAN the hard costs expected to be incurred in advertising expenditures, the projected number of viewers, TOTAL's gross impressions, multi-platform channels, foreign distribution, syndication, cross-promotional opportunities, and all other qualitative and quantitative data relating to "Let it Ride" and "Pulling for America" that TOTAL had devised and had in its possession.

73. At this point in time, TOTAL had disclosed all information it had relating to the creation, implementation, and execution of its novel ideas and concepts to PHD, BBDO, and JOHN DOE(S) I-IX.

74. Between August 4, 2008 and September 22, 2008, TOTAL contacted PHD regarding its client's plans for "Let it Ride" and requested a status update, but did not receive any update.

75. On September 29, 2008, TOTAL received another email from MAREN

informing TOTAL that Chrysler was yet again not interested in pursuing "Let it Ride" in any way.

76. However, ten days prior to the September 29, 2008 email to TOTAL, Dodge launched a new, unique, unconventional marketing campaign on the internet, known as "the Dodge Ram Challenge," in the form of the RamChallenge.com website, on September 19, 2008, and submitted a corresponding press release.

77. In its press release, Dodge noted that the "the Dodge Ram Challenge" was new, unique, and unconventional, for featuring the following elements:

- (a) A first of its kind, long-form reality challenge;
- (b) Using real truck buyers, including "heroes" and "American icons," recruited from around the country;
- (c) Competing in a race with each other;
- (d) On a course;
- (e) Designed to demonstrate the toughness and capabilities of the 2009 Dodge Ram truck;
- (f) Showing the 2009 Dodge Ram truck as it would be used in "real-life;"
- (g) With a grand prize to be awarded to the winner.

78. This was exactly how TOTAL had previously described its idea:

- (a) A first of its kind, long-form reality challenge;
- (b) Using real truck buyers, including "heroes" and "American icons," recruited from around the country;
- (c) Competing in a race with each other;

- (d) On a course;
- (e) Designed to demonstrate the toughness and capabilities of the 2009 Dodge Ram truck;
- (f) Showing the 2009 Dodge Ram truck as it would be used in "real-life;"
- (g) With a grand prize to be awarded to the winner.

79. TOTAL did not distribute or otherwise disclose "Pulling for America" to the public. It had not entered "Pulling for America" into the general stream of commerce.

80. The disclosure of TOTAL's ideas was made in confidence, and it was at all times understood based on the parties' conduct, communications, and representations, expressed and implied, that TOTAL would be compensated for the use of its ideas and concepts.

81. TOTAL took steps to maintain the confidentiality of its ideas and concepts.

82. In fact, every email communication TOTAL sent to the Defendants, which emails contained the only references to TOTAL's website presentations, explained that the email was "intended only for the person or entity to which [was] addressed and [contained] information that [was] privileged, confidential or otherwise protected from disclosure."

83. Additionally, advertising standards and customary practice in the business of advertising and entertainment dictate that the ideas and concepts of a company such as TOTAL would be disclosed in complete confidence to prospective clients, in order to foster disclosure to prospective clients for their consideration. This standard for confidentiality is consistent with what is promulgated by the American Association of

Advertising Agencies, the Advertising Research Foundation, the Association of National Advertisers, and the American Advertising Federation.

84. The Defendants extracted and misappropriated TOTAL's underlying ideas for use in their own format.

85. The Defendants stole the concepts and ideas originally presented to it by TOTAL, without any notice or credit being extended to TOTAL, and used them as their own.

86. The "Dodge Ram Challenge" advertisements were, in the last quarter of 2008 and the first quarter of 2009, shown *repeatedly and conspicuously* in television advertisements, print advertisements, and currently remain on the internet in "webisodes."

87. Additionally, theRamChallenge.com website includes a documentary entitled "The Making of Dodge Ram Challenge," in which every facet of TOTAL's proprietary ideas, concepts, and presentation can be seen, including but not limited to the "real-life" concept, the theme of America, toughness, and the idea of demonstrating the 2009 Dodge Ram truck.

88. The "Dodge Ram Challenge" television advertisements were most recently aired a multitude of times in January 2009 during the National Football League play-off games, and were also ubiquitous during the Bowl Championship Series College Championship Game. Viewers were hard-pressed to miss seeing those advertisements.

89. The "Dodge Ram Challenge" is an obvious misappropriation, duplication, and clone of "Pulling for America" and "Let it Ride."

COUNT I - IDEA MISAPPROPRIATION

90. The Plaintiff repeats the allegations contained in paragraphs 1 through 89 as though they are incorporated by reference herein.

91. "Pulling for America" and "Let it Ride," as created by TOTAL and disclosed to the Defendants, were novel and unique concepts, peculiar, and not generally available or known to others in the relevant industries.

92. In fact, Dodge described these ideas in its press release as a "first of its kind, long-form reality competition" and as a "game-changing marketing launch."

93. The disclosure of "Pulling for America" and "Let it Ride" was made in confidence to the Defendants. TOTAL expressed to the Defendants that any disclosure TOTAL made to the Defendants was intended only for the Defendants and was confidential.

94. These ideas were the property of TOTAL, and represented TOTAL's creativity, initiative, talent, and vision, as well as years of hard-work and refinement.

95. Once the Defendants learned of TOTAL's idea and recognized its value, it actively sought to misappropriate that property for its own use.

96. The Defendants induced and encouraged TOTAL to present the details regarding "Pulling for America" and "Let it Ride" time and time again, and inquired with great enthusiasm about every detail and aspect of the creation, implementation, and execution of TOTAL's novel ideas and concepts, until they had learned enough of TOTAL's ideas and concepts to be able to implement the concept as their own.

97. The Defendants misappropriated the concepts and ideas contained in

"Pulling for America" and "Let it Ride," and did so without permission from, notice to, or credit given to TOTAL.

98. The Defendants' conduct in using "Pulling for America" and "Let it Ride," without permission from, notice to, or credit and compensation given to TOTAL, constitutes a tortious misappropriation of TOTAL's novel concept and ideas.

WHEREFORE, the Plaintiff, TMR MULTIMEDIA, INC., asks this Honorable Court for Judgment against the Defendants, THE PHD NETWORK, B.B.D.O a/k/a BATTEN, BURTON, DURSTINE, and OSBORN, and JOHN DOE(S) I-IX, for damages in excess of \$15,000.00, plus statutory interests, reasonable attorneys' fees, costs, and such other and further relief as this Honorable Court deems just and proper.

COUNT II - UNJUST ENRICHMENT

99. The Plaintiff reavers the allegations contained in paragraphs 1 through 89 as though they are incorporated by reference herein.

100. As "Pulling for America" and "Let it Ride" represent novel ideas and concepts, their disclosure, and subsequent implementation, has value.

101. TOTAL's disclosure to the Defendants of "Pulling for America" and "Let it Ride" constitutes a benefit conferred by TOTAL upon the Defendants.

102. The Defendants knew that a benefit had been conferred on them by TOTAL.

103. The Defendants voluntarily accepted and retained the benefit conferred on them by TOTAL.

104. The Defendants induced and encouraged TOTAL to present the details regarding "Pulling for America" and "Let it Ride" time and time again, and inquired with

great enthusiasm about every detail and aspect of the creation, implementation, and execution of TOTAL's novel ideas and concepts, until they had learned enough of TOTAL's ideas and concepts to be able to implement the concept as their own.

105. Given these circumstances, it would be inequitable for the Defendants to retain the benefits they received without compensation to TOTAL for the fair value of the benefit.

106. The Defendants have been unjustly enriched at the expense of TOTAL.

107. TOTAL is entitled to damages as a result of the Defendants' unjust enrichment, including but not limited to, the Defendants' gain and revenue generated from the use of TOTAL's ideas and concepts, as well as the disgorgement of the value of the use of TOTAL's ideas unlawfully accepted by the Defendants.

WHEREFORE, the Plaintiff, TMR MULTIMEDIA, INC., asks this Honorable Court for a Judgment against the Defendants, THE PHD NETWORK, B.B.D.O a/k/a BATTEN, BURTON, DURSTINE, and OSBORN, and JOHN DOE(S) I-IX, for compensatory damages for unjust enrichment in excess of \$15,000.00, plus statutory interests, reasonable attorneys' fees, costs, and such other and further relief as this Honorable Court deems just and proper.

COUNT III - BREACH OF IMPLIED-IN-FACT CONTRACT

108. The Plaintiff reavers the allegations contained in paragraphs 1 through 89 as though they are incorporated by reference herein.

109. TOTAL submitted its ideas and concepts to the Defendants, and the Defendants received them.

110. Based on industry standards and the conduct and identity of the parties, there was an implied and/or expressed agreement, prior to TOTAL's disclosure, that TOTAL would disclose its ideas in consideration for the Defendants' promise to compensate it for the use of its ideas.

111. In addition, during the course of the communications between TOTAL and the Defendants, the Defendants expressly asked TOTAL what its compensation would be if the Defendants were to use its ideas.

112. The Defendants voluntarily accepted the submission on TOTAL's terms and impliedly agreed to compensate TOTAL for the use of its ideas and concepts, which conduct was further bolstered when CODD and BERNAL asked for the compensation structure that TOTAL would require.

113. The Defendants used TOTAL's ideas, and created a work based substantially on TOTAL's ideas in the form of "the Dodge Ram Challenge," rather than from their own ideas.

114. As a result, an implied-in-fact contract was formed between TOTAL and the Defendants.

115. The Defendants have breached this implied-in-fact contract.

116. As a result, TOTAL has suffered damage.

WHEREFORE, the Plaintiff, TMR MULTIMEDIA, INC., asks this Honorable Court for Judgment against the Defendants, THE PHD NETWORK, B.B.D.O a/k/a BATTEN, BURTON, DURSTINE, and OSBORN, and JOHN DOE(S) I-IX, for damages in excess of \$15,000.00, plus statutory interests, reasonable attorneys' fees, costs, and such other and

further relief as this Honorable Court deems just and proper.

COUNT IV - CIVIL CONSPIRACY

117. The Plaintiff reavers the allegations contained in paragraphs 1 through 89 as though they are incorporated by reference herein.

118. The Defendants, PHD, BBDO, and JOHN DOE(S) I-IX are parties to a civil conspiracy.

119. There was a meeting of the minds of all the Defendants, in which the Defendants PHD, BBDO, and JOHN DOE(S) I-IX willfully, intentionally, and knowingly agreed and conspired to misappropriate TOTAL's ideas and concepts unlawfully, and/or to commit theft of TOTAL's trade secrets, in order to present them as their own.

120. After the June 27, 2008 rejection of TOTAL's offer by the Defendants for the use of its ideas and concepts, the Defendants then requested in multiple communications and solicitations to TOTAL that TOTAL disclose all of its information relating to "Let it Ride" and "Pulling for America."

121. These communications and solicitations were false statements, designed to con TOTAL into believing that the Defendants were interested in working with TOTAL, and would there upon compensate TOTAL for the use of its ideas.

122. TOTAL justifiably relied on the Defendants' false statements and communications as TOTAL had no reason to suspect these statements and communications were false. Indeed, TOTAL's principals became very excited that their years of hard work would by all indications finally pay off.

123. TOTAL's justifiable reliance on the Defendants' statements and

communications created a duty owed by the Defendants, PHD, BBDO, and JOHN DOE(S) I-IX, not to steal, misappropriate, or otherwise take TOTAL's ideas and concepts without compensation.

124. The Defendants committed overt acts in furtherance of their conspiracy.

125. These acts include the Defendants' requests of TOTAL to disclose all of its information relating to "Let it Ride" and "Pulling for America," beginning on July 2, 2008 and ending on September 29, 2008.

126. Specifically, between July 2, 2008 and July 29, 2008, HORREVORTS, BERNAL, and CODD continually and repeatedly contacted TOTAL via email and telephone and requested specific information related to pricing and placement for "Let it Ride," in furtherance of their conspiracy.

127. CODD's representation after July 22, 2008 over the phone to TOTAL that its proposal had been "green-lighted" was another act committed by the Defendants in furtherance of their conspiracy.

128. The July 29, 2008 email from BERNAL requesting a breakdown of information on pricing and timing for "Let it Ride" was also an overt act in furtherance of the conspiracy.

129. Another overt act in furtherance of the conspiracy occurred in July 2008 when FRUMAN of BBDO requested specific information from TOTAL pertaining to media costs.

130. Additionally, the September 22, 2008 email from CODD informing TOTAL that she still was attempting to reach her client for a status update and had not yet heard from her client was done in furtherance of the conspiracy.

131. This communication was patently false, as on September 19, 2008, three days prior and at that point unknown to TOTAL, the "Dodge Ram Challenge" had been launched on the internet.

132. These conspiratorial acts also included the Defendants' launch of the "Dodge Ram Challenge" as though the concept had been created by the Defendants.

133. The acts also consist of the Defendants' continued presentations of TOTAL's ideas and concepts as their own, engaging various media, including television, print advertisements, and the internet.

134. The conspiracy of the Defendants PHD, BBDO, and JOHN DOE(S) I-IX and their corresponding overt acts have caused TOTAL to suffer damage.

WHEREFORE, the Plaintiff, TMR MULTIMEDIA, INC., asks this Honorable Court for Judgment against the Defendants, THE PHD NETWORK, B.B.D.O a/k/a BATTEN, BURTON, DURSTINE, and OSBORN, and JOHN DOE(S) I-IX, for damages in excess of \$15,000.00, plus statutory interests, reasonable attorneys' fees, costs, and such other and further relief as this Honorable Court deems just and proper.

COUNT V - THEFT OF TRADE SECRETS

135. The Plaintiff reavers the allegations contained in paragraphs 1 through 89 as though they are incorporated by reference herein.

136. A trade secret, as defined in Fla. Stat. § 812.081(1)(c), is "the whole or part of any portion or phase of any pattern or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know it."

137. The ideas and concepts that TOTAL disclosed to the Defendants are a trade secret, as defined by Fla. Stat. § 812.081(1)(c), as TOTAL's ideas and concepts represented information which was for use, or was used, in the operation of TOTAL's business and which provided TOTAL an advantage, or an opportunity to obtain an advantage, over the Defendants and all other parties engaged in the same business as TOTAL, as these parties did not otherwise know of the information.

138. In addition, the ideas and concepts that TOTAL disclosed to the Defendants are secret, as defined by Fla. Stat. § 812.081(1)(c)1, irrespective of the novelty, invention, or patentability of TOTAL's ideas and concepts, and irrespective of the state of the prior art and the level of skill related to TOTAL's ideas and concepts, as defined by Fla. Stat. § 812.081(1)(c).

139. The ideas and concepts that TOTAL disclosed to the Defendants have value, defined in Fla. Stat. § 812.012(10)(a)3 as "any reasonable value representing the damage to TOTAL, suffered by reason of TOTAL losing an advantage over those who do not know of or use the trade secret."

140. The ideas and concepts that TOTAL disclosed to the Defendants are for use or are in use by TOTAL's business, pursuant to Fla. Stat. § 812.081(1)(c)3.

141. Pursuant to Fla. Stat. § 812.081(1)(c)4, the ideas and concepts that TOTAL disclosed to the Defendants were that of advantage to TOTAL's business, or provided an opportunity to obtain an advantage over those who do or did not know or use TOTAL's ideas and concepts.

142. Pursuant to Fla. Stat. § 812.081(1)(c)4, TOTAL took measures to prevent its

ideas and concepts from becoming available to persons other than those selected by TOTAL to have access thereto for limited purposes.

143. TOTAL's ideas and concepts constitute its trade secrets, as defined by Fla. Stat. § 812.081(1)(c).

144. The Defendants obtained the disclosure of TOTAL's trade secrets with the intent to deprive TOTAL of the control of its trade secrets, and with the intent to appropriate TOTAL's trade secrets for the Defendants' own use or for the use of another, as defined by Fla. Stat. § 812.081(2).

145. As a result of the Defendants' willful, intentional, and wanton theft of TOTAL's trade secrets, TOTAL has suffered damage.

WHEREFORE, the Plaintiff, TMR MULTIMEDIA, INC., asks this Honorable Court for Judgment against the Defendants, THE PHD NETWORK, B.B.D.O a/k/a BATTEN, BURTON, DURSTINE, and OSBORN, and JOHN DOE(S) I-IX, for damages in excess of \$15,000.00, plus statutory interests, reasonable attorneys' fees, costs, and such other and further relief as this Honorable Court deems just and proper.

COUNT VI - FRAUDULENT MISREPRESENTATION

146. The Plaintiff reavers the allegations contained in paragraphs 1 through 89 as though they are incorporated by reference herein.

147. The Defendants, PHD, BBDO, and JOHN DOE(S) I-IX, together, and/or through their individual agents, employees, and/or representatives, including but not limited to, MARSHALL, CODD, and/or BERNAL, made misrepresentations to TOTAL regarding material facts.

148. When requesting that TOTAL disclose all of its information relating to "Let it Ride" and "Pulling for America," from June 2008 to September 2008, the Defendants made multiple misrepresentations in the several communications.

149. The misrepresentations were that the Defendants were interested in working with TOTAL, and would compensate TOTAL for the use of its ideas.

150. Specifically, on June 27, 2008, following their rejection of TOTAL's offer of "Pulling for America," every solicitation and communication by the Defendants consisted of a misrepresentation by the Defendants that they were considering TOTAL's offer and would compensate TOTAL.

151. These solicitations and communications include, and are not limited to, the continuous and numerous requests by HORREVORTS, BERNAL, and CODD, via email, from July 2, 2009 to July 29, 2008, that TOTAL send them specific information regarding pricing and placement for "Let it Ride," with actual numbers, estimated impressions, timing, and all other quantitative data in TOTAL's possession.

152. Specifically, on July 22, 2008, BERNAL requested that TOTAL send her a breakdown of information regarding an estimate on pricing and placement of TOTAL's ideas.

153. CODD then informed TOTAL, via teleconference, that the Defendant PHD had "green-lighted" its offer.

154. And in July 2008, FRUMAN requested via teleconference that TOTAL disclose to her the media costs associated with "Let it Ride" and "Pulling for America."

155. In addition, on September 22, 2008, CODD informed TOTAL via email, in

response to TOTAL's request for a status update from the Defendants regarding their interest in implementing "Let it Ride" and/or "Pulling for America," that CODD was still attempting to reach Chrysler regarding any status update and had not yet heard from Chrysler.

156. There can now no be no question that the September 22, 2008 communication from CODD to TOTAL was false, as on September 19, 2008, three days prior, the "Dodge Ram Challenge" had been launched on the internet.

157. The misrepresentations made by the Defendants between June 2008 and September 2008 concerned material facts, as the Defendants induced TOTAL to disclose to the Defendants all of the information it had in its possession relating to "Let it Ride" and "Pulling for America," with the understanding that TOTAL would be compensated if its ideas were used. TOTAL would not have made these disclosures, but for the misrepresentations.

158. The Defendants knew at the time they requested TOTAL's disclosures of the proprietary information, that the statements and communications the Defendants made to TOTAL in order to induce TOTAL to make its disclosures were false, as it is now obvious that the Defendants' intentions were to misappropriate TOTAL's ideas and concepts as their own without paying any compensation.

159. The Defendants made these misrepresentations to TOTAL in order to induce TOTAL to make the disclosures, and TOTAL did so disclose in reliance upon the misrepresentations.

160. TOTAL acted with justifiable reliance on the representations made by the

Defendants at the time that TOTAL made the disclosures to the Defendants.

161. As a result of the misrepresentations made by the Defendants and the justifiable reliance by TOTAL, TOTAL has suffered damage.

WHEREFORE, the Plaintiff, TMR MULTIMEDIA, INC., asks this Honorable Court for Judgment against the Defendants, THE PHD NETWORK, B.B.D.O a/k/a BATTEN, BURTON, DURSTINE, and OSBORN, and JOHN DOE(S) I-IX, for damages in excess of \$15,000.00, plus statutory interests, reasonable attorneys' fees, costs, and such other and further relief as this Honorable Court deems just and proper.

COUNT VII - CONSTRUCTIVE FRAUD

162. The Plaintiff repeats the allegations contained in paragraphs 1 through 89 as though they are incorporated by reference herein.

163. TOTAL's disclosures to the Defendants PHD, B.B.D.O, and JOHN DOE(S) I-IX were made in confidence.

164. By disclosing its confidential ideas and concepts to the Defendants, TOTAL reposed a high degree of trust in the Defendants.

165. The Defendants had a duty not to abuse the trust that TOTAL had placed in them.

166. By misrepresenting to TOTAL that the Defendants would compensate it for the use of its ideas if used, the Defendants abused the trust that TOTAL had placed in them.

167. The misrepresentations consisted of the communications and solicitations the Defendants made, which further created the impression to TOTAL that it would be

compensated, and should therefore accordingly disclose its confidential ideas to the Defendants.

168. Specifically, every solicitation and communication by the Defendants following their rejection of TOTAL's offer of "Pulling for America" on June 27, 2008 consisted of a misrepresentation by the Defendants that they were considering TOTAL's offer and would thereupon compensate TOTAL.

169. These solicitations and communications include, but are not limited to, the continuous and multiple requests by HORREVORTS, BERNAL, and CODD, via email, from July 2, 2009 to July 29, 2008 that TOTAL send to them specific information regarding pricing and placement for "Let it Ride," with actual numbers, estimated impressions, timing, and all other quantitative data in TOTAL's possession.

170. Specifically, on July 22, 2008, BERNAL requested that TOTAL send her a breakdown of information regarding an estimate on pricing and placement of TOTAL's ideas.

171. After July 22, 2008, CODD informed TOTAL, via teleconference, that the Defendant PHD had "green-lighted" its offer.

172. Furthermore, in July 2008, FRUMAN requested via teleconference that TOTAL disclose to her the media costs associated with "Let it Ride" and "Pulling for America."

173. In addition, on September 22, 2008, CODD informed TOTAL via email, in response to TOTAL's request for a status update from the Defendants regarding their interest in implementing "Let it Ride" or "Pulling for America," that CODD was still

attempting to reach Chrysler regarding any status update.

174. There is now no question that the September 22, 2008 communication from CODD to TOTAL was false, as on September 19, 2008, three days prior, the "Dodge Ram Challenge" had been launched on the internet.

175. As a result of the Defendants' acts and misrepresentations, described herein, the Defendants have abused their duty to TOTAL, or at the very least, the Defendants have taken an unconscionable advantage over TOTAL.

176. Therefore, the Defendants have committed constructive fraud.

177. TOTAL has suffered damage as a result of this constructive fraud.

WHEREFORE, the Plaintiff, TMR MULTIMEDIA, INC., asks this Honorable Court for Judgment against the Defendants, THE PHD NETWORK, B.B.D.O a/k/a BATTEN, BURTON, DURSTINE, and OSBORN, and JOHN DOE(S) I-IX, for damages in excess of \$15,000.00, plus statutory interests, reasonable attorneys' fees, costs, and such other and further relief as this Honorable Court deems just and proper.

COUNT VIII - CIVIL THEFT

178. The Plaintiff reavers the allegations contained in paragraphs 1 through 89 as though they are incorporated by reference herein.

179. TOTAL has complied with all conditions precedent, including making a written demand to the Defendants for the damages it is owed under Fla. Stat. § 772.11(1).

180. In violation of Fla. Stat. § 812.014(1)(a) and (b), the Defendants knowingly obtained and used, or endeavored to obtain or use, the property of TOTAL, consisting of TOTAL's ideas and concepts, with the intent to permanently to deprive TOTAL of the

benefit it owned in its ideas and concepts, and to appropriate TOTAL's ideas and concepts to their own use.

181. Therefore, the Defendants have committed a theft of TOTAL's property.

182. As a result of the Defendants' violation of Fla. Stat. § 812.014(1)(a) and (b), TOTAL has been injured.


183. Pursuant to Fla. Stat. § 772.11(1), TOTAL is entitled to threefold the actual damages it sustained, or fifteen million dollars, (\$15,000,000.00), or in the alternative, at least minimum damages of five million dollars (\$5,000,000.00), together with any reasonable attorneys' fees and costs, associated with this litigation.

WHEREFORE, the Plaintiff, TOTAL MULTIMEDIA, INC., asks this Honorable Court for a Judgment against the Defendants, THE PHD NETWORK, B.B.D.O a/k/a BATTEN, BURTON, DURSTINE, and OSBORN, and JOHN DOE(S) I-IX, for treble damages in the amount of fifteen million dollars (\$15,000,000.00), plus statutory interests, reasonable attorneys' fees, costs, and such other and further relief as this Honorable Court deems just and proper.

TOTAL requests a trial by jury on all issues so triable.

Respectfully submitted,

THE TICKIN LAW GROUP, P.A.
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Deerfield, Beach, Florida 33441
Telephone Number: (954) 570-6757
Facsimile Number: (954) 570-6760

By:  _____ *Fl Bar. 5003*
ROBIN SOMMERS
FLORIDA BAR NO.: 0018699 *R*
SATYEN GANDHI
FLORIDA BAR NO.: 0018108

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained hereon do not replace nor supplement the filing and service of pleading as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

09-61356

FILED BY *[Signature]* DC
AUG 28 2009
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
New York, New York of FLA. - MIAMI
(EXCEPT IN U.S. PLAINTIFF CASES ONLY)

I. (a) PLAINTIFFS TMR MULTIMEDIA, INC. (b) County of Residence of First Listed Plaintiff <u>Broward County, Florida</u> (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS PHD MEDIA L.L.C. and BBDO WORLDWIDE INC. County of Residence of First Listed <u>New York, New York</u> of <u>FLA. - MIAMI</u> (EXCEPT IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED
(c) Attorneys (Firm Name, Address and Telephone Number) THE TICKTIN LAW GROUP, P.A. ROBIN SOMMERS, ESQ. 600 W. HILLSBORO BLVD., SUITE 220 DEERFIELD BEACH, FL 33441 TELEPHONE: (954) 570-6757	Attorneys (If Known) CARLTON FIELDS, P.A. PATRICIA THOMPSON, ESQ. 100 SE 2ND STREET, SUITE 200 MIAMI, FLORIDA 33131 TELEPHONE: (305) 530-0050 CIV - COHN

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in one box for plaintiff (For Diversity Cases Only) One Box For Defendant) <table border="1"> <tr> <td></td> <td>PTF</td> <td>DEF</td> <td></td> <td>PTF</td> <td>DEF</td> </tr> <tr> <td>Citizen of this State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated or Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign County</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of this State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated or Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign County	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)					
CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/ DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 28 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (PLACE AN X IN ONE BOX ONLY)

1 Original Proceeding
 2 Removed from State Court
 3 Re-filed- (See VI below)
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S)

(See instructions second page): a) Re-filed Case Yes No b) Related Cases Yes No

JUDGE _____ DOCKET NUMBER _____

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

U.S. CIVIL STATUTE: 28 U.S.C. § 1332
 BRIEF DESCRIPTION: Plaintiff asserts claims against Defendants for "Idea Misappropriation," "Unjust Enrichment," "Breach of Implied-in-Fact Contract," "Civil Conspiracy," "Theft of Trade Secrets," "Fraudulent Misrepresentation," "Constructive Fraud" and "Civil Theft" relating to advertising campaign(s).
 LENGTH OF TRIAL: via 7-10 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demand in complaint Check YES only if demanded in complaint: JURY DEMAND YES NO

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD: *[Signature]* DATE: 8/28/09

FOR OFFICE USE ONLY:

AMOUNT: 350 - RECEIPT #: 1007483 IFP: _____