

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DELTA AIR LINES, INC.,)

Plaintiff,)

v.)

Case No.)

1:13-CV-03388-TCB)

JOHN WUNDER; BRIDGEWATER MARKETING,)
LLC dba TIER 3 PRODUCTIONS; TRAVEL CLUB)
MARKETING BROKERS, LLC; CLASSIC)
PROMOTIONS & PREMIUMS, INC.; JOHN)
VANGINHOVEN; JAMES CURTIS LEMLEY;)
NATIONWIDE TRAVEL PROMOTIONS; KING)
TRAVEL PROMOTIONS; AMERICAN TRAVEL)
SUPPLIERS; CHRISTI WIGLE; CHELSEE FLY;)
ROB FLY; ORBITAL PROMOTIONS; ORACLE)
TRAVEL PROMOTIONS; SB GLOBAL)
MARKETING, LLC; LAURENT HAZOUT; SARA)
BAYLISS; KESSLER CREATIVE, LLC; KEITH)
KESSLER; DINA KESSLER; MAIL TO YOU, LLC;)
MAILHOUSE, LLC; BRAD FRY; INFLUENCE)
DIRECT, LLC; ANDY RIDDLE; JEREMY)
CROSSLIN; NETWORK CONSULTING)
ASSOCIATES, INC.; JOHN ANDERSON; JODY)
RITTER; JOHN ELMER; ALLSTAR MARKETING)
DIRECT, LLC; AERIE DAVIS; GRAND)
INCENTIVES, INC.; JOSE MARTINEZ; GRACE)
MARTINEZ; JD & T ENTERPRISES, INC.; DELTA)
SKY REWARDS, LLC; PRESCIENT MARKETING,)
LLC; MEREDITH SARVER; AND)
JOHN DOES 1-50,)

Defendants.)

FIRST AMENDED COMPLAINT FOR INJUNCTION & DAMAGES

Delta Air Lines, Inc. (“Delta” or “Plaintiff”) files this Complaint For Injunction And Damages (“Complaint”) against Defendants John Wunder, Bridgewater Marketing, LLC d/b/a Tier 3 Productions, Travel Club Marketing Brokers, LLC, Classic Promotions & Premiums, Inc., John Vanginhoven, James Curtis Lemley, Nationwide Travel Promotions, King Travel Promotions, American Travel Suppliers, Christi Wigle, Chelsee Fly, Rob Fly, Orbital Promotions, Oracle Travel Promotions, SB Global Marketing, LLC, Laurent Hazout, Sara Bayliss, Kessler Creative, LLC, Keith Kessler, Dina Kessler, Mail To You, LLC, Mailhouse LLC, Brad Fry, Influence Direct, LLC, Andy Riddle, Jeremy Crosslin, Network Consulting Associates, Inc., John Anderson, Jody Ritter, John Elmer, Allstar Marketing Direct, LLC, Aerie Davis, Grand Incentives, Inc., Jose Martinez, Grace Martinez, J D & T Enterprises, Inc., Delta Sky Rewards, LLC, Prescient Marketing, LLC, Meredith Sarver, and John Does 1-50 (all defendants, collectively without modifier, “Defendants”), whose intentional infringement, conspiracy, and other wrongful acts, individually and in combination, have caused and continue to cause substantial and irreparable harm to Delta. Delta shows as follows:

Overview of Defendants' Wrongful Acts

1.

This lawsuit presents a textbook case of intentional trademark infringement by a well-organized ring of intellectual property pirates. As a part of a fraudulent scheme to sell travel club memberships, Defendants have illegally and in bad faith misappropriated for profit Delta's protected name and marks, including, but not limited to, the venerable DELTA name/mark, Delta's iconic WIDGET LOGO mark, and Delta's famous SKYMILES mark.

2.

Specifically, Defendants have manufactured, mailed, and are otherwise using and/or profiting from correspondence and other marketing materials that bear the Delta Marks and expressly purport to have been sent by Delta. These fraudulent promotional materials, which falsely appear to have been sent by Delta, inform the recipient that he or she has won two roundtrip Delta tickets pursuant to a Delta promotion.

3.

By trading upon the goodwill, fame, and credibility inherent in Delta's name and marks, Defendants attempt to lure responding recipients to a high-pressure sales presentation for travel club memberships that are, in many instances,

worthless.

4.

Defendants' scheme involves a sophisticated web of participants and roles. (*Id.*) Every Defendant – all of whom are direct marketing and travel club scheme insiders – has both actual and constructive knowledge of the infringing, fraudulent, and illegal nature of their own and the other Defendants' wrongful acts. In some instances, the wrongdoers are separate entities working in concert, with each getting paid to carry out a particular portion of the overall scheme. In other instances, the wrongdoers undertake a variety of infringing roles and are involved throughout the enterprise.

5.

Delta has not authorized any Defendant to use in any way its name or marks. Delta is in no way affiliated with any Defendant. Delta has not agreed to sponsor or participate in any manner in any promotion or giveaway by, through, or in relation to any Defendant.

6.

Defendants' illegal acts have caused and are causing irreparable harm to Delta.

7.

Delta now brings this action to prevent the further misappropriation of its name, marks, and intellectual property by Defendants; to cause Defendants to cease and desist from further defrauding the American public; and to recover damages arising from Defendants' willful and bad-faith actions and other wrongful acts.

Jurisdictional Allegations

Plaintiff

8.

Delta is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 1030 Delta Boulevard, Atlanta, Georgia 30320. Delta has been and is engaged in substantial business activities within this judicial district.

9.

Defendant John Wunder is a resident of Phoenix, Arizona. He may be served at the corporate offices of the Tier 3 Defendants or alternatively at his home in Phoenix, Arizona.

10.

Defendant Bridgewater Marketing, LLC d/b/a Tier 3 Productions is a

Wyoming limited liability company with its principal place of business in Scottsdale, Maricopa County, Arizona. It may be served at its corporate office in Scottsdale Arizona; at the office of its Arizona Registered Agent – John Wunder – at 3240 E. Union Hills Dr., Phoenix, Arizona 85050; or at the office of its Wyoming Registered Agent – SmallBiz Agents – at 109 W. 17th St., Cheyenne, Wyoming 82001.

11.

Defendant Travel Club Marketing Brokers, LLC is a Wyoming limited liability company with its principal place of business and registered office in Cheyenne, Wyoming. It may be served at the office of its Wyoming Registered Agent – SmallBiz Agents – at 109 W. 17th St., Cheyenne, Wyoming 82001.

12.

Defendant Classic Promotions & Premiums, Inc. is a Delaware corporation with its principal place of business at 2257 Vista Parkway, Suite 9, West Palm Beach, Florida 33411. It may be served at its principal business location; at the office of its Florida Registered Agent – John Vanginhoven – at that same business address; or at the office of its Delaware Registered Agent – American Incorporators, Ltd. – at 1013 Centre Road, Suite 403-A, Wilmington, Delaware 19805.

13.

Defendant John Vanginhoven is a resident of West Palm Beach, Florida. He may be served at the corporate offices of Classic Promotions & Premiums, Inc. at 2257 Vista Parkway, Suite 9, West Palm Beach, Florida 33411, or alternatively at his home in Stuart, Florida.

14.

Defendant James Curtis Lemley (“Lemley”) is a resident of Woodbridge, Virginia. Lemley may be served at his home address in Woodbridge, Virginia in Prince William County.

15.

Defendants Nationwide Travel Promotions, King Travel Promotions, American Travel Suppliers, Oracle Travel Promotions, and Orbital Promotions are business entities of unknown type or alternatively, are unregistered trade names or aliases of Lemley and/or are owned and/or managed by Lemley. Each of these entities has, upon information and belief, a principal place of business in or around Woodbridge, Virginia in Prince William County. Nationwide Travel Promotions, King Travel Promotions, American Travel Suppliers, Oracle Travel Promotions, and Orbital Promotions may be served via personal service upon Lemley at his home address or wherever else its officers, managers, and/or agents may be found.

16.

Defendant Christi Wigle (“Wigle”) is, upon information and belief, a resident of Knoxville, Tennessee in Know County. Wigle is an owner, officer, manager, and/or agent of Defendants Nationwide Travel Promotions, King Travel Promotions, Orbital Promotions, and Oracle Travel Promotions and personally participated in, directed, and ratified the tortious and infringing acts of these Defendants. Wigle may be served at her home address.

17.

Defendants Chelsee Fly and Rob Fly are residents of Charleston, South Carolina. Chelsee Fly and Rob Fly may be served at their business address in Charleston, South Carolina.

18.

Defendant SB Global Marketing, LLC is a Delaware limited liability company with its principal place of business in Las Vegas, Nevada. SB Global Marketing, LLC may be served at the office of its Delaware Registered Agent – The Company Corporation – at 2711 Centerville Rd., Suite 400, Wilmington, Delaware 19808 in New Castle County.

19.

Defendant Laurent Hazout (“Hazout”) is a Canadian citizen with an

unknown state of residence. Hazout may be served wherever he may be found.

20.

Defendant Sara Bayliss (“Bayliss”) is a resident of Studio City, California. She may be served at her residence in Studio City, California.

21.

Defendant Kessler Creative, LLC is a Florida limited liability company with its registered office and principal place of business at 12276 San Jose Boulevard, Suite 115, Jacksonville, Florida 32223 in Duval County. Kessler Creative, LLC may be served via service upon its Registered Agent Dina Kessler at that address, service upon officer Keith Kessler at that address, or at the home address of Dina and Keith Kessler. Defendants Keith Kessler and Dina Kessler may also be served at any of the foregoing addresses at which they may be found.

22.

Defendant Mail to You, LLC is a Wyoming limited liability company with a principal place of business at 2525 W. Carefree Highway, Building 4 – Suite 124, Phoenix, Arizona 85085 in Maricopa County. Mail to You, LLC may be served at the office of its Wyoming Registered Agent – SmallBiz Agents – at 109 W. 17th St., Cheyenne, Wyoming 82001 or upon officer/owner John Wunder at Mail to You, LLC’s principal place of business.

23.

Defendant Mailhouse, LLC is a Wyoming limited liability company with a principal place of business and registered office at 109 W. 17th St., Cheyenne, Wyoming 82001. Mailhouse, LLC may be served via its Registered Agent – SmallBiz Agents – at that address.

24.

Defendant Brad Fry is, upon information and belief, a resident of Phoenix, Arizona. Brad Fry may be served at his business address, which is 2525 W. Carefree Highway, Building 4 – Suite 124, Phoenix, Arizona 85085 in Maricopa County.

25.

Defendant Influence Direct, LLC is a Tennessee limited liability company with its principal place of business and registered office at 2441-Q Old Fort Parkway, #318, Murfreesboro, Tennessee 37128. It may be served at that address by service upon its Registered Agent/COO Jeremy Crosslin or its CEO Andy Riddle.

26.

Defendant Andy Riddle is a Tennessee resident with a principal place of business at Influence Direct, Inc., 2441-Q Old Fort Parkway, #318, Murfreesboro,

Tennessee 37128. He may be served at that address.

27.

Defendant Jeremy Crosslin is a Tennessee resident with a principal place of business at Influence Direct, Inc., 2441-Q Old Fort Parkway, #318, Murfreesboro, Tennessee 37128. He may be served at that address.

28.

Defendant Network Consulting Associates, Inc. is a Florida corporation with its principal place of business at 8514 Sunstate Street, Tampa, FL 33634. Network Consulting Associates, Inc. may be served at the office of its Registered Agent – Swart Baumruk & Company, LLP – at 1101 Miranda Lane, Kissimmee, Florida 37471 – or upon one of its officers – John Anderson, Jody Ritter, and/or John Elmer – at its above-noted principal address.

29.

Defendant John Elmer is a resident of Lutz, Florida. John Elmer's principal business address at Network Consulting Associates, Inc. is 8514 Sunstate Street, Tampa, FL 33634. He may be served at either address.

30.

Defendant John Anderson is a resident of Tampa, Florida. John Anderson's principal business address at Network Consulting Associates, Inc. is 8514 Sunstate

Street, Tampa, FL 33634. He may be served at either address.

31.

Defendant Jody Ritter is a resident of Tampa, Florida. Jody Ritter's principal business address at Network Consulting Associates, Inc. is 8514 Sunstate Street, Tampa, FL 33634. He may be served at either address.

32.

Defendant Allstar Marketing Direct, LLC is a Virginia limited liability company with its principal place of business at 12754 Darby Brooke Court, Woodbridge, Virginia 22192. Allstar Marketing Direct, LLC may be served at that address via officer/owner Aerie Davis or other officer/manager or at the office of its Registered Agent – Aerie Davis – at 5568 General Washington Drive, Alexandria, Virginia 22312 in Fairfax County.

33.

Defendant Aerie Davis is a resident of Alexandria, Virginia. She may be served at her principal business address at Allstar Marketing Direct, LLC, which is 12754 Darby Brooke Court, Woodbridge, Virginia 22192. Aerie Davis may also be served at the address at which she is listed as a Registered Agent – 5568 General Washington Drive, Alexandria, Virginia 22312.

34.

Defendant Grand Incentives, Inc. is a Florida corporation with its principal place of business at 7560 Commerce Court, Sarasota, Florida 34243. Grand Incentives, Inc. may be served at the office of its Registered Agent – Jose Martinez – at 11219 Marigold Drive, Bradenton, Florida 34202. Grand Incentives, Inc. may also be served at its above-noted principal business address by service upon President Jose Martinez or Vice-President Grace Martinez.

35.

Defendants Jose Martinez and Grace Martinez are residents of Florida. They may be served at their principal business address at Grand Incentives, Inc. at 7560 Commerce Court, Sarasota, Florida 34243. One or both may also be served at the registered office of Grand Incentives, Inc. at 11219 Marigold Drive, Bradenton, Florida 34202. They may also be served at their home addresses.

36.

Defendant J D & T Enterprises, Inc. (also known as JD & T Enterprises, Inc.) is a California corporation with its principal place of business at 7964 Arjons Drive, Suite B, San Diego, California 92126. J D & T Enterprises, Inc. may be served at the office of its Registered Agent – Timothy Binder – at 5404 Moorhouse, Suite 315, San Diego, CA 92121. J D & T Enterprises, Inc. may also

be served at its principal business address by service at its above-noted principal business upon an officer or manager.

37.

Defendant Delta Sky Rewards, LLC is a Wyoming limited liability company with its principal place of business in Cheyenne, Wyoming. Delta Sky Rewards, LLC may be served at the office of its Wyoming Registered Agent – SmallBiz Agents – at 109 W. 17th St., Cheyenne, Wyoming 82001.

38.

Defendant Prescient Marketing, LLC is a business entity or trade name of unknown state of origin. Prescient Marketing, LLC has a principal place of business at 382 Northeast 191st Street, Miami, FL 33179 in Dade County and may be served at that address. Prescient Marketing may also be served upon manager/officer Meredith Sarver wherever she may be found.

39.

Meredith Sarver is a resident of Phoenix, Arizona with an unknown address. She may be served where she is found.

40.

Meredith Sarver is a resident of Phoenix, Arizona with an unknown address. Sarver is an owner, officer, manager, and/or agent of Defendant Prescient

Marketing, LLC and personally participated in, directed, and ratified the tortious and infringing acts of that entity. She may be served where she is found.

41.

Due to the above-named Defendants' intentional dissembling and obfuscation, there are likely to be numerous persons and entities that are material participants in the above-described travel club scheme that Delta has been unable to positively identify as of the filing of this First Amended Complaint.

42.

The remaining John Doe defendants are the as-yet-unknown principals, agents, associates, partners, and alter-egos of the defendants identified herein.

Personal Jurisdiction

43.

As is detailed below, as a part of their overall scheme, Defendants have purposefully availed themselves of the right to do business in the State of Georgia. The misconduct of Defendants has involved substantial, systematic, and continuous contacts with Georgia. Among other Georgia-related action and conduct, Defendants sent a massive number of fraudulent notifications into Georgia via the United States Postal Service and then scheduled and conducted sales meetings in Georgia with numerous prospective customers. Each of the

notifications sent into Georgia targeted a Georgia resident.

44.

Every individual named as a Defendant, by their respective intentional acts, personally participated in, carried out, directed, or otherwise ratified, the tortious and infringing conduct described herein.

45.

Accordingly, Defendants are subject to jurisdiction pursuant to, among other sources, the Georgia Long-Arm Statute (O.C.G.A. § 9-10-91), the doctrines of general and specific jurisdiction, co-conspirator jurisdiction, and the principles set forth in Calder v. Jones, 465 U.S. 783, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984).

46.

As is detailed below, Defendants' acts have caused and are causing a substantial detrimental effect on U.S. commerce by negatively affecting Delta's longstanding and famous reputation. These wrongful acts are directed by Defendants toward Delta and, pursuant to Defendants' express intent, cause harm to Delta in its home state of Georgia.

47.

Because of the measures taken by Defendants to conceal their true identities, the names and identities of the remaining John Doe Defendants are not yet known

to Delta. Through investigation and discovery in the present matter, Delta will determine the identities of these Defendants and will identify them by amendment to this Complaint.

Subject Matter Jurisdiction

48.

This Court has subject matter jurisdiction over all claims presented in this Complaint.

49.

Specifically, this Court has subject matter jurisdiction over the Federal claims pursuant to 28 U.S.C. §§1331 (federal question jurisdiction); 28 U.S.C. § 1338(a) (original jurisdiction in trademark cases); and 15 U.S.C. §§ 1114 *et seq.* (the Lanham Act).

50.

This Court has supplemental jurisdiction over the claims in this Complaint that arise under the laws of the State of Georgia pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the federal claims that they form a part of the same case or controversy and derive from a common nucleus of operative facts. Jurisdiction over Delta's state law claims also exists pursuant to 28 U.S.C. §1338(b) (cases involving unfair competition claims).

51.

Venue is proper in this judicial district. Pursuant to 28 U.S.C. §§1391(b) and (c), in specific relation to the causes of action set forth herein, Defendants are transacting business and causing harm to Delta in this district. Moreover, a substantial portion of the complained-of events and wrongful acts occurred in this district, and Delta's claims accordingly arose in this district. Finally, venue is also independently proper under the related jurisdictional principles set forth in Calder v. Jones, 465 U.S. 783, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984).

Factual Allegations Common to All Counts

Overview of Defendants' Wrongful Acts

52.

Defendants are the architects of and participants in a fraudulent and intentional scheme designed to harm the business reputation of Delta; diminish the value of the DELTA mark, the WIDGET LOGO mark, the SKYMILES mark, and the other Delta Marks; and defraud innocent retail purchasers who erroneously believe that Defendants are Delta or are acting on behalf of or in conjunction with Delta.

53.

Defendants have manufactured, mailed, and are otherwise using and/or profiting from correspondence and other marketing materials that bear the Delta Marks and/or expressly purport to have been sent by Delta.

54.

The purpose of Defendants' impersonation of Delta is to further the scheme of selling "travel club" memberships pursuant to which members are promised (but do not receive) steep discounts in future travel expenses and other gifts and awards.

55.

Defendants' scheme involves a sophisticated web of participants and roles.

56.

Although the travel industry includes legitimate companies that provide true value for the purchase of similar memberships, those Defendants herein who participated in or had knowledge of the infringing marketing campaign are not included in that group. Rather, such Defendants are willing and knowing participants in criminal activities pursuant to which they and other wrongdoers: (a) masquerade as Delta or an authorized Delta partner to defraud their unfortunate victims; and/or (b) are aware that other Defendants are doing so as a part of the

overall scheme. Every Defendant – all of whom are direct marketing and travel club scheme insiders – has both actual and constructive knowledge of the infringing, fraudulent, and illegal nature of their own and the other Defendants’ wrongful acts.

57.

As is detailed below, Defendants’ acts have caused and are causing a substantial detrimental effect on U.S. commerce by negatively affecting Delta’s longstanding and famous reputation. These wrongful acts are directed by Defendants toward Delta and, pursuant to Defendants’ express intent, cause harm to Delta in its home state of Georgia.

Plaintiff Delta Air Lines, Inc. and its Famous Marks

58.

Delta is one of the world’s largest commercial airlines, generating over 36 billion dollars in annual revenue and offering service to more destinations than any other global airline with carrier service to 330 destinations in 65 countries on six continents. Delta serves more than 160 million customers each year. Through Delta’s long and successful efforts, its DELTA name and mark, its WIDGET LOGO mark, its SKYMILES mark, and Delta’s other registered marks (collectively, the “Delta Marks”) have earned extensive goodwill, favorable

recognition, and a worldwide reputation for high-quality products and services. Delta's DELTA, WIDGET LOGO, and SKYMILES marks are famous marks, instantly recognizable as sources of goodwill, high reputation, and high-quality goods and services.

59.

Delta offers and sells its goods and services under and in conjunction with, among others, the following DELTA-related trademark and service mark registrations in the United States:

<u>Reg. No.</u>	<u>Mark</u>	<u>Registration Date</u>
0523611	DELTA AIR LINES	April 4, 1950
0654915	DELTA	November 19, 1957
0802405	DELTAMATIC	January 18, 1966
0963228	DELTA AIR LINES (IN OVAL LOGO)	July 3, 1973
0970418	DELTA AIR LINES	October 9, 1973
1428763	DELTA CONNECTION	February 10, 1987
1703774	DELTA SHUTTLE	July 28, 1992
1733703	DELTA CENTER	November 17, 1992
1740294	DELTA CENTER (WITH WIDGET LOGO)	December 15, 1992
2058985	DELTA & 1960 AIRCRAFT DESIGN	May 6, 1997
2408003	DELTA VACATIONS	November 28, 2000
2662451	DELTA AIRELITE	December 17, 2002
2980826	DELTA CONNECTION	August 2, 2005
3890727	DELTA SKY CLUB	December 14, 2010
3994004	DELTA ASSIST	July 12, 2011

60.

These registrations, which issued on the Principal Register, are in full force and effect. The majority of these registrations have long since acquired

“incontestable” registration status. Attached as Exhibit A are sample extracts of these registrations from the United States Patent and Trademark Office.

61.

Delta offers and sells its goods and services under and in conjunction with, among others, the following WIDGET LOGO-related trademark and service mark registrations in the United States:

<u>Reg. No.</u>	<u>Mark</u>	<u>Registration Date</u>
0704103	WIDGET LOGO	September 6, 1960
1143697	WIDGET (OPEN)	December 16, 1980
2556013	WIDGET LOGO	April 2, 2002

62.

These registrations, which issued on the Principal Register, are in full force and effect. All of these registrations have acquired “incontestable” registration status. Attached as Exhibit B are sample extracts of these registrations from the United States Patent and Trademark Office.

63.

Delta offers and sells its goods and services under and in conjunction with, among others, the following SKYMILES-related trademark registration in the United States:

<u>Reg. No.</u>	<u>Mark</u>	<u>Registration Date</u>
1968255	SKYMILES	April 16, 1996

64.

This registration, which issued on the Principal Register, is in full force and effect. This registration has long since acquired “incontestable” registration status. Attached as Exhibit C is an extract of this registration from the United States Patent and Trademark Office.

65.

The DELTA, WIDGET LOGO, and SKYMILES marks, along with the other Delta Marks, serve as unique and famous source identifiers for Delta and its various goods and services, including air transportation and other travel-related services.

66.

Delta has invested billions of dollars in worldwide advertising and marketing in order to build the fame, reputation, and goodwill of the DELTA, WIDGET LOGO, and SKYMILES marks, both in the United States and worldwide. Delta advertises through a variety of media, including the Internet (on Delta’s own web site, as well as the web sites of third-parties), television, radio, newspapers, magazines, and direct mail.

67.

Through Delta’s longstanding use of the DELTA, WIDGET LOGO, and

SKYMILES marks and its promotional activities related to the marks, and due to the widespread and favorable public acceptance and recognition of those marks, the DELTA, WIDGET LOGO, and SKYMILES marks have become distinctive designations of the source of origin of Delta's goods and services.

68.

The DELTA, WIDGET LOGO, and SKYMILES marks have become uniquely associated with Delta and its high quality goods and services.

69.

The DELTA, WIDGET LOGO, and SKYMILES marks are assets of incalculable value as symbols of Delta, its high-quality goods and services, and its goodwill.

70.

By reason of Delta's extensive promotion and sale of its highly-regarded goods and services, the DELTA, WIDGET LOGO, and SKYMILES marks have acquired valuable goodwill, recognition, and renown. The public has come to recognize these marks as signifying Delta.

71.

By virtue of their extensive use and promotion over the years, the DELTA, WIDGET LOGO, and SKYMILES marks have developed valuable distinctiveness

and secondary meaning in the marketplace. The marks have attained a significant and lasting presence in the marketplace, causing the marks to achieve high recognition and value among consumers.

72.

Other than Delta and its authorized affiliates, licensees, and partners, no one is permitted to use the DELTA, WIDGET LOGO, and SKYMILES marks or any other Delta Mark for commercial gain.

73.

Defendants are not authorized to use the DELTA mark, the WIDGET LOGO mark, the SKYMILES mark, or any other Delta Mark.

74.

As is detailed below, Defendants have illegally and in bad faith misappropriated for profit Delta's protected name and marks, including, but not limited to, the venerable DELTA name/mark, Delta's iconic WIDGET LOGO mark, and Delta's famous SKYMILES mark.

Overview of the "Travel Club Scheme"

The Travel Fulfillment Company

75.

The travel club scheme starts with a company – the "travel fulfillment

company” – seeking to sell memberships in its travel club via the below-described subterfuge. These memberships cost thousands of dollars and promise deeply discounted rates for future travel.

The Distributors

76.

The travel fulfillment company contracts with numerous “distributors” to sell its memberships.

77.

The distributors are agents of the travel fulfillment company and may even use the travel fulfillment company’s “Seller of Travel” license number in states where such certification is required.

78.

Each distributor receives a member services web site branded with the distributor’s (fictitious) name that is, in fact, simply a gateway to the Travel Fulfillment Company’s member services web site.

79.

The vehicle for membership sales is an ongoing series of in-person group sales meetings. These presentations often occur in hotel conference rooms and are offered by the various distributors repeatedly (up to 20 times a week or more for a

single distributor in a single location) over the course of several weeks or months at revolving locations across the country.

The Printer/Mailers

80.

The most vital aspect of the travel club scheme involves the concerted efforts of the scheme participants to cause as many potential purchasers as possible to attend the distributors' sales presentations.

81.

This is accomplished by massive wave after massive wave of blatantly misleading and infringing direct mail marketing campaigns to potential membership purchasers, including a substantial number of Georgia residents.

82.

In these campaigns, the wrongdoers use the Delta name and Marks to masquerade as Delta and to trade fraudulently upon the goodwill, fame, and credibility inherent in the Delta brand.

83.

These bogus marketing materials (collectively, the "Infringing Correspondence") vary among several designs, including: (1) letters ("Letters") supposedly signed by a non-existent Delta Vice-President; (*Samples at Exhibit D*

hereto); (2) postcards (“Postcards”) purporting to have been sent by Delta as part of a fictitious Delta air-travel promotion; (*Exhibit E*); (3) counterfeit Delta boarding pass vouchers (“Vouchers”); (*Exhibit F*); (4) counterfeit Delta checks (“Checks”) (*Exhibit G*) and (5) other letters (“Fly Letters”) bearing the Delta name/Mark; (*Exhibit H*).

84.

Upon information and belief, Defendants have collectively sent millions of pieces of Infringing Correspondence.

85.

Set forth immediately below is an example of a Letter received by one of Defendants’ potential victims. In the interest of the recipient’s privacy, personally identifying information has been redacted.

 DELTA
SKYREWARDS

September 23rd, 2013


Denver, CO 80226

NOTE: You must respond no later than October 2nd, 2013.

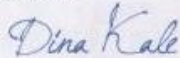
Dear 

I am pleased to inform you that you have qualified for an award of **2 roundtrip airline tickets**. Congratulations. These tickets are valid for travel anywhere in the continental U.S. from any major international airport. The retail value of this award is up to \$1,229.00. Certain restrictions apply.

We have attempted contacting you several times without success. This is our last attempt. If we do not hear from you soon, we may need to issue the ticket vouchers to the alternate.

Please call me today at 1-866-866-996-3351.

Regards,



Dina Kale
Vice President

116-759-161

86.

As noted above, additional Letter examples are attached hereto at Exhibit D.

87.

The heading of each Letter prominently displays the DELTA name and mark.

88.

The heading of each Letter displays a red triangle that closely mimics Delta's WIDGET LOGO.

89.

The heading of each letter includes the phrase "DELTA SKYREWARDS," an obvious reference to and knockoff of Delta's famous "SKYMILES" mark and program.

90.

Each of the fraudulent Letters advises the recipient that he or she has qualified for an award of two roundtrip Delta airfares (i.e., two Delta tickets).

91.

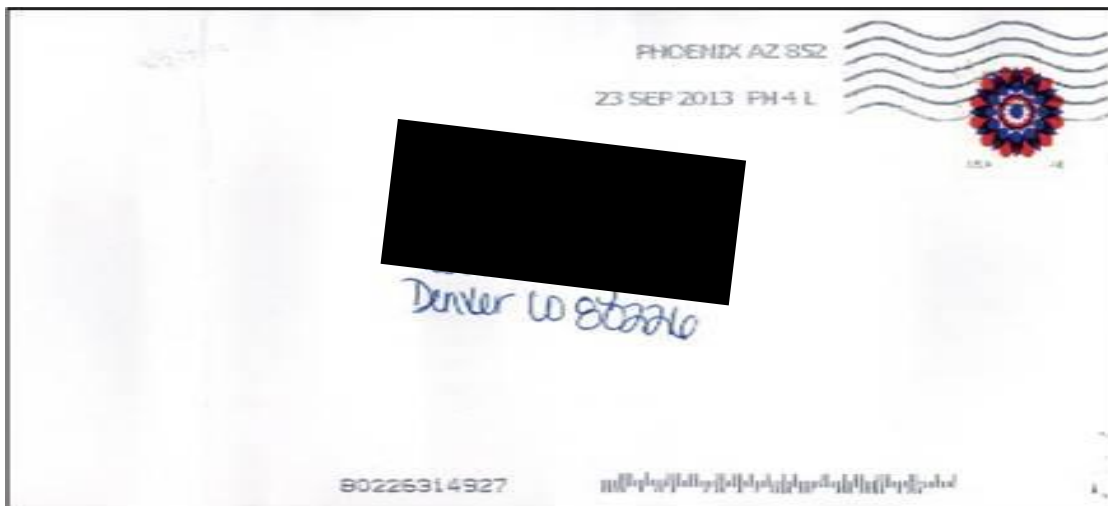
The fraudulent Letter campaign is distinctive because it involves the use of hand-addressed envelopes.

92.

Most, if not all, of the Letters are mailed from Phoenix, Arizona.

93.

Set forth immediately below is an example of a hand-addressed envelope used to send a Letter. This envelope was postmarked in Phoenix, Arizona.



94.

Due to the content of the Letter, including Defendants' unauthorized and illegal use of the DELTA mark, the WIDGET LOGO mark, and, via a confusing reference to Delta's supposed "SKYREWARDS" program, Delta's SKYMILES mark, it appears to the recipient that Delta is running the promotion and is offering two free roundtrip airline tickets.


95.

Because of these illegal and infringing uses of Delta's name and marks, each Letter appears to have been sent by Delta.

96.

Set forth immediately below is an example of a Postcard received by one of Defendants' potential victims. In the interest of the recipient's privacy, personally identifying information has been redacted.



 **DELTA**

PRESORTED
FIRST-CLASS MAIL
US POSTAGE PAID
LAS VEGAS, NV
PERMIT NO. 2736

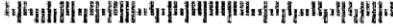
In celebration of our new year packages we've selected you to receive 2 round trip airfares to anywhere in the contiguous United States — good for the next 12 months!

Call within 48 hours and receive a 3 day 2 night hotel stay at major brands.

To claim this special offer, simply call and mention your promo code

Call Toll Free **1-888-989-1663** **PROMO CODE: DLAT-0413**
Mon-Fri 9am-9pm Sat 10am-4pm EST

Passengers [REDACTED]



[REDACTED] T7 - P8

Atlanta GA 30309-1534

All trademarks & service marks are the property of their respective owners. Offer void where prohibited by law. All components of this offer are fulfilled by a third party. Certain restrictions apply. Recipient responsible for all applicable taxes & fees. Please call for details.

97.

As noted above, additional Postcard examples are attached at Exhibit E.

98.

The front of each Postcard prominently features the DELTA name and mark.

99.

The front of each Postcard displays Delta's WIDGET LOGO.

100.

The front of each Postcard also refers to the fictitious promotion pursuant to which Delta has supposedly sent the Postcard. The bogus promotion names include "FLY AWAY PROMOTION," "FLY AWAY ESCAPE," and the like.

101.

The back of the Postcard includes the DELTA name and mark and, in some instances, the WIDGET LOGO.

102.

The back of each Postcard advises the recipient that, among other prizes and awards, the recipient has been selected to receive two roundtrip Delta airfares.

103.

Due to the content of each Postcard, including Defendants' unauthorized and illegal use of the DELTA, WIDGET LOGO, and SKYMILES marks, it appears to

the recipient that Delta is running the promotion and is offering two free roundtrip airline tickets.

104.

Because of these illegal and infringing uses of Delta's name and marks, each Postcard likewise appears to have been sent by Delta.

105.

The Infringing Correspondence **never** mentions its actual purpose (the sale of travel club memberships), and it **never** reveals the true names or identities of any of the travel club scheme participants.

106.

Instead, each piece of Infringing Correspondence – which, again, **all fraudulently bear the Delta Marks and all of which other than the Fly Letter expressly purport to have been sent by Delta** – informs the recipient (the “Recipient/Victim”) that he has been selected to receive a “gift” or “award” of two round-trip Delta airfares.

107.

The Infringing Correspondence directs the Recipient/Victim to call Delta at a specified toll-free number to claim his prize. On the basis of this fraudulent bait – the false promise of Delta airline tickets, coupled with the eminent trust and

credibility inherent in Delta and its Marks – a substantial number of Recipient/Victims call to claim their Delta tickets.

The Call-Center Schedulers

108.

Incoming calls from Recipient/Victims to the specified toll-free numbers are received and handled by call-center operators known as “schedulers.”

109.

The scheduler asks a series of income and lifestyle-related questions to determine whether the responding Recipient/Victim qualifies as a potential travel club membership purchaser.

110.

Non-qualifying Recipient/Victims are told that they are not eligible to receive the prize (the Delta airfares) promised by the Infringing Correspondence. Qualifying Recipient/Victims are told that, to claim their Delta tickets, they must attend a nearby travel-related sales meeting.

111.

The Recipient/Victims are not told that these conferences are, in fact, high-pressure sales presentations run by infringing Distributors and conducted for the purpose of selling memberships that numerous state attorneys general, governmental agencies,

and Better Business Bureaus deem to be worthless.

The Award Fulfillment Company

112.

If the Recipient/Victim attends a complete sales presentation and insists upon receiving the promised Delta airfares, the distributor gives the Recipient/Victim a written voucher that includes contact information for the supposedly “independent company” responsible for providing the promised Delta tickets (the “award fulfillment company”).

113.

When the Recipient/Victim attempts to collect the promised tickets, however, he learns that he must ultimately pay expenses, taxes, and fees that often exceed the total value of the tickets and must navigate vague instructions and paperwork, in relation to which any error voids the award.

114.

If the Recipient/Victim does, in fact, make all of the payments demanded by the award fulfillment company and successfully navigates the paperwork labyrinth, he still finds that the absurdly broad limitations and restrictions on whatever airfare vouchers he does receive render them essentially worthless.

Purchase by Recipient/Victim of Travel Club Membership

115.

If the Recipient/Victim actually purchases a travel club membership, the Recipient/Victim is then directed to the travel fulfillment company. When the Recipient/Victim attempts to book travel through this membership, however, he typically learns that the membership offers no meaningful discount and is, in fact, worthless.

Defendants' Specific Enterprise Roles Herein

Tier 3 Productions, John Wunder, Travel Club Marketing Brokers, LLC, Delta Sky Rewards, LLC, Prescient Marketing, LLC, and Meredith Sarver

116.

Defendant Bridgewater Marketing, LLC is headquartered in Phoenix, Arizona, is owned and run by John Wunder, and does business as Tier 3 Productions (“Tier 3”).

117.

Among other roles and responsibilities in the travel club scheme giving rise to Delta’s lawsuit, Tier 3 offers turnkey direct mail marketing campaign management for certain distributors, including the design and printing of Infringing Correspondence; the mailing of Infringing Correspondence; the procurement of

toll-free numbers and the staffing and operation of the toll-free call center for responding Recipient/Victims; and the procurement and handling of “gifts” or “awards” (i.e., the supposed airfare vouchers) used to lure prospective purchasers to sales presentations.

118.

Tier 3’s services include the unusual niche of direct mail campaigns using hand-addressed envelopes and hand-signed letters.

119.

Moreover, Tier 3’s experience includes extensive incentive campaigns involving the gift/award of roundtrip airfares.

120.

The roles and activities of Tier 3 and its principal John Wunder permeate the travel club scheme giving rise to Delta’s lawsuit.

121.

Tier 3 prepared and sent the Infringing Letters, which were hand-signed (on behalf of fictitious Delta Vice-Presidents), hand-addressed, and then mailed from Phoenix.

122.

Tier 3 owned toll-free phone numbers specified in the Infringing Letters and was responsible for the maintenance and operation of the call center that fielded the calls from responding Recipient/Victims who believed they were calling Delta to claim their awarded airfares.

123.

Moreover, in relation to its provision of direct mail and call-center services, Tier 3 uses an ever-changing array of company names, including, among others, “Featured Travel.”

124.

At all times relevant to its liability herein, Tier 3 owned the toll-free customer contact number – (866) 232-2002 – specified on Featured Travel’s web site (featuredtravel.com).

125.

Tier 3 brazenly uses the Delta name and Marks on that web site to advertise its infringing direct-mail campaign.

126.

Travel Club Marketing Brokers, LLC (“TCMB”) is yet another new Wunder-related company involved in the travel club scheme.

127.

TCMB was formed on September 26, 2013 and offers the same services as Tier 3 – turnkey marketing for travel club scheme distributors, including mailing, call center, and scheduling services.

128.

The business address that TCMB provided to its web hosting company – 1601 N. 7th St., Suite 210, Phoenix Arizona 85006 – is the same as that of Market Development Partners, LLC, for whom John Wunder was and is the agent and manager.

129.

Among other joint activities, TCMB owned and maintained web sites under certain of the company names used by Tier 3 to field incoming calls from Recipient/Victims responding to Infringing Letters, including “americantravelexpress.com” (for American Travel Express) and “featuredtravel.com” (for Featured Travel).

130.

Like the Featured Travel web site, the American Travel Express web site flagrantly uses the Delta name and Marks to advertise its infringing direct-mail campaign.

131.

Delta Sky Rewards, LLC (“Sky Rewards”) is a Wyoming corporation formed in September 2013 that is apparently the ostensible sponsor of the infringing “Delta Sky Rewards” program advertised in Wunder’s/Tier 3’s Infringing Letters.

132.

Sky Rewards shares its principal business address – 109 W. 17th St, Cheyenne, Wyoming – with a host of other Wunder-related companies.

133.

Prescient Marketing, LLC (“Prescient”) is yet another Wunder-related entity involved in yet another aspect of the travel club scheme. Prescient markets itself as the “premier broker” – including bulk mail and telephone services – for the recruitment of attendees at travel club sales presentations (i.e., distributor presentations).

134.

Prescient obtained Bulk Mail Permit 2001 on September 30, 2013 and immediately began sending Infringing Correspondence.

135.

Meredith Sarver is an associate and employee of Tier 3 and John Wunder. She is responsible and culpable for the infringing and illegal use of Bulk Mail Permit 2001. Sarver is an owner, officer, and/or manager of Defendant Prescient Marketing, LLC and personally participated in, directed, and ratified the tortious and infringing acts of that entity.

136.

Wunder is an owner, officer, and/or manager of Defendants Bridgewater Marketing, LLC d/b/a Tier 3 Productions, Travel Club Marketing Brokers, LLC, Delta Sky Rewards, LLC, and Prescient Marketing, LLC and personally participated in, directed, and ratified the tortious and infringing acts of those entities.

Defendant James Curtis Lemley and His Web of Involved Defendants, including Orbital Promotions, Oracle Travel Promotions, King Travel Promotions, American Travel Suppliers, Nationwide Travel Promotions, Christi Wigle, Chelsea Fly, and Rob Fly

137.

Curtis Lemley (“Lemley”) and his web of related entities and individuals are involved in virtually every phase of the illegal acts giving rise to Delta’s claims.

138.

Lemley is the owner of at least three distributors – Nationwide Travel Promotions, King Travel Promotions, and American Travel Suppliers – on whose behalf and with whose full knowledge and approval Infringing Postcards were sent to lure Recipient/Victims to travel club sales presentations.

139.

At these sales presentations (including numerous ones in and around Atlanta), these three companies – by and through Defendant Christi Wigle, Chelsea Fly, Rob Fly, and others – collected the attending Recipient/Victims’ postcards and attempted to sell travel club memberships on behalf of Vacation Fulfillment.

140.

Lemley also owns and controls the involved “award fulfillment” companies (i.e., the companies supposedly in charge of supplying the two Delta tickets promised to attendees).

141.

These companies include Orbital Promotions and Oracle Travel Promotions.

142.

Because Lemley’s modus operandi involves the frequent change of entity names, there are a number of identical predecessor entities as well, all of whom

engaged in fraudulent conduct like that complained of herein.

143.

Lemley is an owner, officer, and/or manager of Defendants Orbital Promotions, Oracle Travel Promotions, King Travel Promotions, American Travel Suppliers, and Nationwide Travel Promotions and personally participated in, directed, and ratified the tortious and infringing acts of those entities.

144.

Christi Wigle, Chelsea Fly, and Rob Fly are owners, officers, and/or managers of Defendants Orbital Promotions, Oracle Travel Promotions, King Travel Promotions, American Travel Suppliers, and Nationwide Travel Promotions and personally participated in, directed, and ratified the tortious and infringing acts of those entities.

***SB Global Marketing, LLC and its
Principals Laurent Hazout and Sara Bayliss***

145.

The Infringing Correspondence includes pieces sent via Bulk Mail Permit Number 2736.

146.

At all pertinent times, this Permit Number has been assigned to and used by

SB Global Marketing, LLC. (“SB Global”).

147.

Defendant Laurent Hazout is an owner, officer, and/or manager of Defendant SB Global and personally participated in, directed, and ratified the tortious and infringing acts of that entity.

148.

Defendant Sara Bayliss is an owner, officer, and/or manager of Defendant SB Global and personally participated in, directed, and ratified the tortious and infringing acts of that entity.

***Classic Promotions and Premiums, Inc. and
its Principal John Vanginhoven***

149.

The Infringing Correspondence includes pieces sent via Bulk Mail Permit Number 3950. At all pertinent times, this Permit Number has been assigned to and used by Classic Promotions & Premiums, Inc. (“Classic Promotions”).

150.

Classic Promotions is a Florida corporation that specializes in the printing and mailing of direct mail advertisements, including postcards, as well as the

creation and execution of related “incentive programs” like the supposed ticket giveaway giving rise to Delta’s claims herein.

151.

Defendant John Vanginhoven is an owner, officer, and/or manager of Defendant Classic Promotions and Premiums, Inc. and personally participated in, directed, and ratified the tortious and infringing acts of that entity.

152.

The violations of Classic Promotions and Vanginhoven herein are aggravated by the fact that Classic Promotions and Vanginhoven are repeat intentional offenders.

153.

Classic Promotions and Vanginhoven have been repeatedly ordered by other major airlines to cease and desist from the exact type of infringing ticket-related campaigns now complained of by Delta.

***Kessler Creative, LLC and its
Principals Keith and Dina Kessler***

154.

The Infringing Correspondence includes pieces sent via Bulk Mail Permit Number 584.

155.

At all pertinent times, this Permit Number has been assigned to and used by Kessler Creative, LLC (“Kessler Creative”).

156.

Kessler Creative specializes in the creation, printing, and mailing of direct mail advertisements, including postcards.

157.

Defendants Keith Kessler and Dina Kessler are owners, officers, and/or managers of Defendant Kessler Creative, LLC and personally participated in, directed, and ratified the tortious and infringing acts of that entity.

Mail to You, LLC, Mailhouse, LLC, and Brad Fry

158.

The Infringing Correspondence includes pieces sent via Bulk Mail Permit Numbers 1765 and 1767.

159.

At all pertinent times, these Permit Numbers have been assigned to and used by Mail to You, LLC (“Mail to You”) and Mailhouse, LLC (“Mailhouse”).

160.

Defendant Brad Fry is an owner, officer, and/or manager of Defendants Mail

to You and Mailhouse and personally participated in, directed, and ratified the tortious and infringing acts of those entities.

***Influence Direct and its Principals
Andy Riddle and Jeremy Crosslin***

161.

The Infringing Correspondence includes pieces sent via Bulk Mail Permit Number 1520.

162.

At all pertinent times, this Permit Number has been assigned to and used by Influence Direct, LLC (“Influence Direct”).

163.

Influence Direct specializes in the printing and mailing of direct mail advertisements, including postcards.

164.

The Influence Direct web site even includes a picture of a sample “award of two airlines tickets” postcard.

165.

Defendants Jeremy Crosslin and Andy Riddle are owners, officers, and/or managers of Defendant Influence Direct and personally participated in, directed,

and ratified the tortious and infringing acts of that entity.

***Network Consulting Associates, Inc. and its Principals
John Elmer, John Anderson, and Jody Ritter***

166.

The Infringing Correspondence includes pieces sent via Bulk Mail Permit Number 78.

167.

At all pertinent times, this Permit Number has been assigned to and used by Network Consulting Associates, Inc. (“NCA”).

168.

NCA specializes in the creation, printing, and mailing of direct mail advertisements, including postcards.

169.

Defendants John Elmer, John Anderson, and Jody Ritter are owners, officers, and/or managers of Defendant NCA and personally participated in, directed, and ratified the tortious and infringing acts of that entity.

Allstar Marketing Direct, LLC and Aerie Davis

170.

The toll-free numbers advertised in the Infringing Postcards include (888)

211-0378.

171.

At all relevant times, this number has been owned and used by Allstar Marketing Direct, LLC (“Allstar”).

172.

Defendant Aerie Davis is an owner, officer, and/or manager of Defendant Allstar and personally participated in, directed, and ratified the tortious and infringing acts of that entity.

173.

A former employee recently reported that Allstar and Davis “sen[t] out millions of post cards with FAKE LOGO’S [sic] such as Delta Airlines” and directed the call center operators to “lie and pretend we were working for [Delta].”

***Grand Incentives, Inc. and its
Principals Jose Martinez and Grace Martinez***

174.

Grand Incentives, Inc. (“Grand Incentives”) is an award fulfillment company involved in the supply of the Delta airfares supposedly awarded to Recipient/Victims who attend a sales presentation.

175.

Defendants Jose Martinez and Grace Martinez are owners, officers, and/or managers of Defendant Grand Incentives and personally participated in, directed, and ratified the tortious and infringing acts of that entity.

176.

The Grand Incentives web site brazenly features Delta Marks (Delta's name and WIDGET LOGO) and falsely states that Grand Incentives was designated and selected by Delta as a Delta "partner." This is an outright lie.

177.

No partnership or any other contractual or business relationship exists between Grand Incentives and Delta.

JD & T Enterprises, Inc. dba Travel to Go dba Vacation Fulfillment

178.

The travel fulfillment company – i.e., the company whose travel club memberships are being knowingly sold via rampant infringement upon Delta's Marks – is California corporation JD & T Enterprises, Inc. dba Travel to Go dba Vacation Fulfillment ("JDT").

179.

JDT allows its agent distributors directly to use JDT's California "Seller of

Travel” (“CST”) Number as they act on behalf of JDT to solicit sales.

180.

JDT is, among other causes and theories, vicariously liable for the acts of its infringing agent/distributors. JDT has actual knowledge of the infringing and illegal means utilized by its agents, distributors, and sales people to sell Vacation Fulfillment memberships.

181.

JDT also has constructive knowledge of the infringement and other fraudulent conduct of those acting on its behalf and is being unjustly enriched, to the substantial detriment of Delta.

**Unauthorized and Harmful Nature of
Misappropriation of Delta Marks by Defendants**

182.

Delta has not authorized any Defendant to use in any way its DELTA mark, its WIDGET LOGO mark, its SKYMILES mark, and/or any other mark or intellectual property belonging to Delta, including the other Delta Marks.

183.

Delta is in no way affiliated with any Defendant.

184.

Delta has in no way agreed to promote, sponsor, or participate in any manner in any giveaway by, through, or in relation to any Defendant.

185.

By using Delta's name and marks in the aforementioned manners, Defendants are passing themselves off as representatives, agents, and/or partners of Delta.

186.

With full knowledge of the fraudulent nature of their illegal campaign and by both express and implied statements, Defendants make it appear that Delta has endorsed Defendants and their illegal "travel club" scheme.

187.

Consumers who encounter Defendants' unauthorized uses of the Delta Marks in association with Defendants' fraudulent promotions are likely to believe erroneously that Defendants and their advertised products and services are related to, approved by, associated with, and/or otherwise affiliated with Delta.

188.

Defendants' wrongful acts and representations harm Delta and its business reputation. These wrongful acts and representations are likely to cause – and have

in fact caused – confusion and mistake by the public and by others in the airline and travel industries. Those who receive or view Defendants’ illegal and infringing materials are deceived into believing that Delta is somehow associated with Defendants’ fraudulent and illegal campaigns.

189.

Defendants’ wrongful acts and representations harm the business reputation of Delta and cause dilution of the distinctive quality of the Delta Marks, including Delta’s famous DELTA, WIDGET LOGO, and SKYMILES marks.

190.

Defendants’ dilution of the famous DELTA, WIDGET LOGO, and SKYMILES marks began after such marks became famous.

191.

Defendants have intentionally, willfully, and with full knowledge of the illegality of their acts, attempted to trade upon the goodwill of Delta and the DELTA, WIDGET LOGO, and SKYMILES marks.

192.

As a result of Defendants’ acts, Delta has suffered and continues to suffer and incur irreparable injury, loss of reputation, and pecuniary damages to be proved at trial. Unless enjoined by this Court, Defendants will continue these acts,

thereby causing Delta further immediate and irreparable damage.

Defendants' Mail Fraud in Furtherance of Scheme
(Predicate Offense in Relation to Federal and State RICO Counts)

193.

In planning and carrying out their fraudulent campaign against Delta, Defendants intended to devise and did devise a scheme or artifice to defraud.

194.

Pursuant to their scheme, Defendants intended to and did obtain money by means of false or fraudulent pretenses, representations, and promises (to wit, that Defendants' fraudulent marketing campaign was undertaken by, was affiliated with, or otherwise was backed or endorsed by Delta).

195.

During the course of planning and carrying out their illegal scheme or artifice, for the purpose of executing such scheme or artifice and as is detailed above, Defendants caused to be transferred by U.S. mail a massive number of fraudulent Letters and Postcards, each of which bore the DELTA mark, the WIDGET LOGO mark, and, in some instances, in a blatant effort to breed confusion with Delta's SKYMILES mark, reference to the "DELTA SKYREWARDS" program.

196.

In violation of 18 U.S.C. § 1341, Defendants have committed mail fraud.

Defendants' Wire Fraud in Furtherance of Scheme
(Predicate Offense in Relation to Federal and State RICO Counts)

197.

In planning and carrying out their fraudulent campaign against Delta, Defendants intended to devise and did devise a scheme or artifice to defraud.

198.

Pursuant to their scheme, Defendants intended to and did obtain money by means of false or fraudulent pretenses, representations, and promises (to wit, that Defendants' fraudulent marketing campaign was undertaken by, was affiliated with, or otherwise was backed or endorsed by Delta).

199.

During the course of planning and carrying out their illegal scheme or artifice, for the purpose of executing such scheme or artifice, Defendants caused to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce writings, signs, signals, pictures, and/or sounds for the purpose of executing such scheme or artifice. Specifically, Defendants engaged in a massive number of telephone conversations via the toll-free phone numbers

specified in the Letters and Postcards and via other outgoing and incoming calls associated with Defendants' "travel club" scam. Each of these calls involved interstate commerce.

200.

In violation of 18 U.S.C. § 1343, Defendants have committed wire fraud.

Incorporation of Facts and Allegations Set Forth in Delta's TRO Brief

201.

Delta incorporates by reference as if alleged herein in full the facts, allegations, evidence, and exhibits set forth in Delta's contemporaneously-filed MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, EX PARTE SEIZURE ORDER, AND EXPEDITED DISCOVERY AND MEMORANDUM OF FACT AND LAW IN SUPPORT THEREOF.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT

202.

Delta realleges and incorporates into this count by reference the allegations contained in paragraphs 1 through 201 above as if those allegations were again set forth in full.

203.

Defendants' unauthorized use in commerce of the DELTA, WIDGET LOGO, and SKYMILES marks, including in the Letters and Postcards and otherwise in relation to Defendants' illegal campaign of fraud and deceit, is likely to result in confusion, deception, and/or mistake by the recipients and other members of the general public.

204.

Defendants' unauthorized use in commerce of the DELTA, WIDGET LOGO, and SKYMILES marks, including in the Letters and Postcards and otherwise in relation to Defendants' illegal campaign of fraud and deceit, has caused actual confusion by the recipients and other members of the general public.

205.

Defendants have used and are continuing to use the DELTA, WIDGET LOGO, and SKYMILES marks with full knowledge of Delta's prior and extensive rights in those marks and other Delta Marks and with a bad faith intent and purpose to trade upon the goodwill of Delta's DELTA, WIDGET LOGO, and SKYMILES marks.

206.

Defendants' infringement is willful and deliberate.

207.

Defendants' unauthorized use in commerce of the DELTA, WIDGET LOGO, and SKYMILES marks constitutes an infringement of Delta's registered trademarks pursuant to 15 U.S.C. §§ 1114 *et seq.*

208.

As a result of Defendants' acts, Delta has suffered and continues to suffer and incur irreparable injury, loss of reputation, and pecuniary damages to be proved at trial. Unless enjoined by this Court, Defendants will continue these acts, thereby causing Delta further immediate and irreparable damage.

COUNT II
UNFAIR COMPETITION UNDER FEDERAL LAW

209.

Delta realleges and incorporates into this count by reference the allegations contained in paragraphs 1 through 201 above as if those allegations were again set forth in full.

210.

Defendants have and are engaged in acts of unfair competition through the use of false designations of origin and false advertising in violation of Section 43(a) of the Trademark Act of 1946, 15 U.S.C. § 1125(a).

211.

Defendants have used and are using without authorization the Delta Marks.

212.

Defendants have made and are making false express and implied representations that their products and services originate with, are associated with, and/or are endorsed or allowed by Delta in such a manner as to create a likelihood of confusion among consumers, thereby inducing the belief that, contrary to fact, Defendants' products and services are sponsored by, approved by, or otherwise tolerated by Delta.

213.

Defendants' unauthorized use in commerce of the DELTA, WIDGET LOGO, and SKYMILES marks constitutes a false designation of origin and a false or misleading representation of fact that is likely to confuse or deceive consumers, or cause consumers to believe mistakenly that Defendants and/or their products and services are offered by Delta, or are otherwise affiliated, connected, or associated with, or sponsored or approved by Delta.

214.

Defendants' unauthorized use in commerce of the DELTA, WIDGET LOGO, and SKYMILES marks in connection with Defendants' marketing,

distribution, promotion, and sale to the consuming public of services and goods (specifically travel-related goods and services) constitutes a misappropriation of the distinguishing and identifying features that Delta created through substantial effort and expense.

215.

Defendants' actions constitute violations of 15 U.S.C. §1125(a) in that such false designation and representations of origin and quality are used on or in connection with the services and products that Defendants cause to enter into or to affect interstate commerce.

216.

Defendants have used and are continuing to use the DELTA, WIDGET LOGO, and SKYMILES trademarks with full knowledge of Delta's extensive and longstanding rights in those trademarks, and therefore with an intent and bad faith purpose to trade upon the goodwill of those marks.

217.

Defendants' infringement is thus willful and deliberate.

218.

Defendants' unauthorized use in commerce of the DELTA, WIDGET LOGO, and SKYMILES marks constitutes unfair competition pursuant to Section

43(a) of the Lanham Act, 15 U.S.C. §§ 1125(a).

219.

Defendants' acts have irreparably damaged, impaired, and diluted Delta's goodwill and good name. Delta has suffered and continues to suffer and incur irreparable injury, loss of reputation, and pecuniary damages to be proved at trial. Unless enjoined by this Court, Defendants will continue these acts, thereby causing Delta further immediate and irreparable damage.

COUNT III
DILUTION OF FAMOUS MARK (LANHAM ACT)

220.

Delta realleges and incorporates into this count by reference the allegations contained in paragraphs 1 through 201 above as if those allegations were again set forth in full.

221.

Defendants have and are engaged in acts constituting dilution in violation of Section 43(c) of the Trademark Act of 1946, 15 U.S.C. § 1125(c).

222.

Defendants have made commercial use of the DELTA, WIDGET LOGO, and SKYMILES marks with the willful intent to trade on Delta's reputation and to

cause dilution of those famous marks/names.

223.

Defendants' use of the DELTA, WIDGET LOGO, and SKYMILES marks began long after those marks and names had become well-known and famous.

224.

Defendants' use of the DELTA, WIDGET LOGO, and SKYMILES marks causes dilution of their distinctive quality.

225.

Defendants' use of the DELTA, WIDGET LOGO, and SKYMILES marks lessens their capacity to identify and distinguish Delta's goods, services, and customers.

226.

Defendants have used and continue to use the DELTA, WIDGET LOGO, and SKYMILES marks with full knowledge of Delta's long prior rights in those marks and the fame of those marks.

227.

Defendants' use of the DELTA, WIDGET LOGO, and SKYMILES marks represents a deliberate intent and bad-faith purpose to trade upon the goodwill of those marks and/or to dilute the distinctive quality of those marks, to blur and

diminish the distinctive quality of those marks, and/or to lessen the marks' capacity to identify and distinguish the services and goods of Delta.

228.

Defendants' activities complained of herein constitute dilution within the meaning of Section 43(c) of the Trademark Act of 1946, 15 U.S.C. § 1125(c).

229.

As a result of Defendants' acts, Delta has suffered and continues to suffer and incur irreparable injury, loss of reputation, and pecuniary damages to be proved at trial. Unless enjoined by this Court, Defendants will continue these acts, thereby causing Delta further immediate and irreparable damage.

COUNT IV
TARNISHMENT OF FAMOUS MARK (LANHAM ACT)

230.

Delta realleges and incorporates into this count by reference the allegations contained in paragraphs 1 through 201 above as if those allegations were again set forth in full.

231.

Defendants' use of the DELTA, WIDGET LOGO, and SKYMILES marks creates an undesirable, unwholesome, and unsavory association with Delta and its

reputation.

232.

Defendants' use of the DELTA, WIDGET LOGO, and SKYMILES marks is grossly inconsistent with the image and goodwill cultivated by Delta through and in relation to the use of those marks.

233.

Defendants' activities complained of herein constitute tarnishment, a special form of dilution within the meaning of Section 43(c) of the Trademark Act of 1946, 15 U.S.C. § 1125(c).

234.

As a result of Defendants' acts, Delta has suffered and continues to suffer and incur irreparable injury, loss of reputation, and pecuniary damages to be proved at trial. Unless enjoined by this Court, Defendants will continue these acts, thereby causing Delta further immediate and irreparable damage.

COUNT V
CONTRIBUTORY TRADEMARK INFRINGEMENT

235.

Delta realleges and incorporates into this count by reference the allegations contained in paragraphs 1 through 201 above as if those allegations were again set

forth in full.

236.

Delta has alleged and shown herein direct trademark infringement by Defendants. In addition to said direct infringement by any particular Defendant, every other Defendant is likewise culpable and liable to Delta for contributory trademark infringement.

237.

In relation to the direct infringement and other related violations by each particular Defendant, every other Defendant has willfully, knowingly, intentionally, and in bad faith participated in, aided, abetted, enabled, encouraged, ratified, profited from, induced, knew of, conspired to carry out, and/or otherwise contributed to said direct infringement.

238.

Defendants' activities complained of herein constitute contributory infringement pursuant to 15 U.S.C. §§ 1114 *et seq.*

239.

As a result of Defendants' contributory infringement, Delta has suffered and continues to suffer and incur irreparable injury, loss of reputation, and pecuniary damages to be proved at trial. Unless enjoined by this Court, Defendants will

continue these acts, thereby causing Delta further immediate and irreparable damage.

COUNT VI
FEDERAL CIVIL RICO VIOLATIONS

240.

Delta realleges and incorporates into this count by reference the allegations contained in paragraphs 1 through 201 above as if those allegations were again set forth in full.

241.

18 U.S.C. § 1964 creates a private cause of action for persons and entities injured by violations of 18 U.S.C. § 1962 (the federal Racketeer Influenced & Corrupt Organizations Act).

242.

Defendants' illegal and infringing campaign detailed above, including the underlying mail fraud and wire fraud, constitutes "racketeering activity" as that term is defined in 18 U.S.C. § 1961.

243.

Defendants' theft, scams, and schemes detailed above constitute a pattern of racketeering activity, as required by 18 U.S.C. § 1961.

244.

In violation of 18 U.S.C. § 1962(a), Defendants have, through the pattern of racketeering activity described above and through the income derived therefrom, used and/or invested such income and its proceeds to acquire, establish, and operate an enterprise engaged in and affecting interstate and foreign commerce.

245.

In violation of 18 U.S.C. § 1962(b), Defendants have, through the pattern of racketeering activity described above and through the proceeds derived therefrom, acquired and/or maintained, directly or indirectly, an interest in and/or control of an enterprise engaged in and affecting interstate and foreign commerce.

246.

In violation of 18 U.S.C. § 1962(c), Defendants have, through a pattern of racketeering activity, conducted and participated in, directly or indirectly, an enterprise engaged in and affecting interstate and foreign commerce.

247.

In violation of 18 U.S.C. § 1962(d), Defendants have conspired and/or endeavored to violate the provisions of 18 U.S.C. §§ 1962 (a), (b), and (c).

248.

Pursuant to 18 U.S.C. § 1964, Defendants are liable to Delta for three times

Delta's actual damages, punitive damages, attorney fees, investigative costs, and all other costs associated with or necessitated by the present litigation.

249.

As a result of Defendants' acts, Delta has suffered and continues to suffer and incur irreparable injury, loss of reputation, and pecuniary damages to be proved at trial. Unless enjoined by this Court, Defendants will continue these acts, thereby causing Delta further immediate and irreparable damage.

250.

Pursuant to 18 U.S.C. § 1964, Delta is entitled to a preliminary injunction and a permanent injunction directing Defendants to cease and desist from the above-described conduct.

COUNT VII
GEORGIA CIVIL RICO VIOLATIONS

251.

Delta realleges and incorporates into this count by reference the allegations contained in paragraphs 1 through 201 above as if those allegations were again set forth in full.

252.

O.C.G.A. § 16-14-6(c) creates a private cause of action for persons and

entities injured by violations of O.C.G.A. 16-14-4 (Georgia's "RICO" or Racketeer Influenced & Corrupt Organizations Act).

253.

Defendants' illegal and infringing campaign detailed above constitutes "racketeering activity" as that term is defined in O.C.G.A. § 16-14-3(3).

254.

Defendants' illegal and infringing campaign constitutes a pattern of racketeering activity as required by O.C.G.A. § 16-14-3(2).

255.

In violation of O.C.G.A. § 16-14-4(a), Defendants have, through the pattern of racketeering activity described above and through the proceeds derived therefrom, acquired and/or maintained, directly or indirectly, an interest in and/or control of an enterprise, real property, and/or personal property (including, but not limited to, money).

256.

In violation of O.C.G.A. § 16-14-4(b), Defendants have, through a pattern of racketeering activity, conducted and participated in, directly or indirectly, an enterprise.

257.

In violation of O.C.G.A. § 16-14-4(c), Defendants have conspired and/or endeavored to violate the provisions of § 16-14-4(a) and (b).

258.

Pursuant to O.C.G.A. § 16-14-6, Defendants are liable to Delta for three times its actual damages, punitive damages, attorney fees, investigative costs, and all other costs associated with or necessitated by the present litigation.

259.

As a result of Defendants' acts, Delta has suffered and continues to suffer and incur irreparable injury, loss of reputation, and pecuniary damages to be proved at trial. Unless enjoined by this Court, Defendants will continue these acts, thereby causing Delta further immediate and irreparable damage.

260.

Pursuant to O.C.G.A. § 16-14-6, Delta is entitled to a preliminary injunction and a permanent injunction directing Defendants to cease and desist from the above-described conduct.

COUNT VIII
UNFAIR COMPETITION (STATE)

261.

Delta realleges and incorporates into this count by reference the allegations contained in paragraphs 1 through 201 above as if those allegations were again set forth in full.

262.

Defendants have and are engaged in fraudulent acts or practices in violation of the prohibition against unfair competition found at O.C.G.A. § 23-2-55.

263.

Defendants have used and are using the DELTA, WIDGET LOGO, and SKYMILES marks in such a manner as to misrepresent the source, sponsorship, approval, and/or certification of Defendants' fraudulent campaign and activities described above.

264.

Defendants' use of the DELTA, WIDGET LOGO, and SKYMILES marks creates the unreasonable risk that recipients of Defendants' Letters and Postcards and other members of the general public may conclude that there exists some affiliation, connection, or association between and among Delta, the Defendants,

and the Defendants' massive campaign of fraud.

265.

Defendants' acts have damaged, impaired, and diluted that part of Delta's goodwill and good name symbolized by the DELTA, WIDGET LOGO, and SKYMILES marks. The nature, probable tendency, intent, and effect of Defendants' use of the DELTA, WIDGET LOGO, and SKYMILES marks are to enable Defendants to deceive the public.

266.

Defendants had actual knowledge of Delta's rights at the time they decided to use the DELTA, WIDGET LOGO, and SKYMILES marks in connection with Defendants' fraudulent campaign. Thus, Defendants willfully and deliberately infringed upon Delta's rights.

267.

Defendants' unfair business practices are of a recurring nature and are harmful to the consumers and the public at large, as well as Delta. These practices constitute unlawful, unfair, and fraudulent business practices and unfair, deceptive, untrue, and misleading advertising.

268.

Defendants' use of the DELTA, WIDGET LOGO, and SKYMILES marks

constitutes unfair competition as prohibited by O.C.G.A. § 23-2-5.

269.

As a result of Defendants' acts, Delta has suffered and continues to suffer and incur irreparable injury, loss of reputation, and pecuniary damages to be proved at trial. Unless enjoined by this Court, Defendants will continue these acts, thereby causing Delta further immediate and irreparable damage.

COUNT IX
DECEPTIVE TRADE PRACTICES

270.

Delta realleges and incorporates into this count by reference the allegations contained in paragraphs 1 through 201 above as if those allegations were again set forth in full.

271.

Defendants have and are engaged in fraudulent acts or practices in violation of the prohibition against deceptive trade practices found at O.C.G.A. § 10-1-372 et seq.

272.

Defendants have used and are using the DELTA, WIDGET LOGO, and SKYMILES marks as a part of Defendants' fraudulent campaign in such a manner

as to misrepresent the source, sponsorship, approval, and/or certification of Defendants' Letters and Postcards and other campaign-related activities.

273.

The use of the DELTA, WIDGET LOGO, and SKYMILES marks by Defendants creates an unreasonable risk that the Letter and Postcard recipients and other members of the general public may conclude that there exists some affiliation, connection, or association between and among Delta, the Letters and Postcards, and Defendants.

274.

Defendants' acts have damaged, impaired, and diluted that part of Delta's goodwill symbolized by the DELTA, WIDGET LOGO, and SKYMILES marks.

275.

The nature, probable tendency, and effect of Defendants' use of the DELTA, WIDGET LOGO, and SKYMILES marks in the manner alleged are to enable Defendants to deceive the public.

276.

Defendants' use of the DELTA, WIDGET LOGO, and SKYMILES marks in the manner alleged constitutes deceptive trade practices of a type prohibited by O.C.G.A. § 10-1-372 et seq.

277.

Defendants had actual knowledge of Delta's rights at the time they decided to use the DELTA, WIDGET LOGO, and SKYMILES marks in connection with Defendants' fraudulent campaign. Defendants accordingly willfully and deliberately infringed upon Delta's rights.

278.

Defendants' unfair business practices are of a recurring nature and harmful to the consumers and the public at large, as well as to Delta. These practices constitute unlawful, unfair, fraudulent, and deceptive business practices and unfair, deceptive, untrue, and misleading advertising.

279.

As a result of Defendants' acts, Delta has suffered and continues to suffer and incur irreparable injury, loss of reputation, and pecuniary damages to be proved at trial. Unless enjoined by this Court, Defendants will continue these acts, thereby causing Delta further immediate and irreparable damage.

COUNT X
UNJUST ENRICHMENT

280.

Delta realleges and incorporates into this count by reference the allegations

contained in paragraphs 1 through 201 above as if those allegations were again set forth in full.

281.

Defendants have and are engaged in acts of unjust enrichment, entitling Delta to quasi-contractual relief under the law of the State of Georgia.

282.

Defendants have derived economic benefit from their unauthorized use of the DELTA, WIDGET LOGO, and SKYMILES marks.

283.

Defendants have paid no compensation to Delta for Defendants' illegal and unauthorized use of the DELTA, WIDGET LOGO, and SKYMILES marks.

284.

As a result of their conduct, Defendants have been unjustly enriched.

285.

As a result of Defendants' acts, Delta has suffered and continues to suffer and incur irreparable injury, loss of reputation, and pecuniary damages to be proved at trial. Unless enjoined by this Court, Defendants will continue these acts, thereby causing Delta further immediate and irreparable damage.

COUNT XI
ATTORNEY FEES PURSUANT TO O.C.G.A. § 13-6-11

286.

Delta realleges and incorporates into this count by reference the allegations contained in paragraphs 1 through 201 above as if those allegations were again set forth in full.

287.

In relation to their wrongful acts described above and to each and every count set forth above, Defendants have acted in bad faith and have caused Delta unnecessary trouble and expense. As detailed above, Defendants intentionally and in bad faith engaged in the specified misconduct with full knowledge of the harm that would result to Delta.

288.

Delta is entitled to recover all expenses and fees relating to the misconduct of Defendants giving rise to the present litigation. Pursuant to O.C.G.A. § 13-6-11, this recovery includes reasonable attorney fees expended herein by Delta.

COUNT XII
PUNITIVE DAMAGES PURSUANT TO O.C.G.A. § 51-12-51

289.

Delta realleges and incorporates into this count by reference the allegations

contained in paragraphs 1 through 201 above as if those allegations were again set forth in full.

290.

In relation to their wrongful acts described above and to each and every count set forth above, Defendants have acted with willful misconduct, malice, fraud, wantonness, oppression, and/or that entire want of care which raises a presumption of conscious indifference to the consequences of their actions.

291.

Defendants knew that their intentional wrongful acts would cause substantial harm to Delta. Defendants intended the consequences of their actions. The express goal of Defendants' wrongful acts was financial gain for Defendants' benefit and at Delta's harm and expense.

292.

Given the egregious and intentional nature of Defendants' conduct, Delta is entitled to an award of punitive damages pursuant to O.C.G.A. § 51-12-5.1 to punish and penalize these Defendants, to deter these Defendants from similar future misconduct, and to deter other persons and entities similarly situated to Defendants from engaging in future misconduct like that of Defendants.

PRAYER FOR RELIEF

Delta prays for judgment against Defendants, and each of them, jointly and severally, that includes:

- (a) A preliminary and permanent injunction enjoining Defendants and any affiliated persons or entities (including their officers, directors, agents, employees, successors, and assigns and all others acting in knowing concert with them) from directly or indirectly:
 - (1) Using any Delta Marks (including the DELTA, WIDGET LOGO, and SKYMILES marks) or any confusingly similar mark or designation in connection with the marketing, promotion, and/or sale of travel-related goods or services;
 - (2) Otherwise infringing upon any trademark or service mark belonging to Delta;
 - (3) Engaging in any other or further acts of unfair competition against Delta;
 - (4) Using any trademark or trade name which will be likely to dilute the distinctive quality of Delta's marks (including the DELTA, WIDGET LOGO, and SKYMILES marks) and/or to tarnish the business reputation of Delta;
 - (5) Engaging in any deceptive trade practices in the offering of goods or

services under or by the use of any Delta Marks (including the DELTA, WIDGET LOGO, and SKYMILES marks) and/or any other variation or simulation of Delta's trademarks; and

(6) Engaging in any deceptive business practice in the offering of goods and/or services under or by the use of the Delta Marks (including the DELTA, WIDGET LOGO, and SKYMILES marks) and/or any other variation or simulation of Delta's trademarks;

- (b) An order directing Defendants to deliver up for destruction all labels, signs, prints, packages, wrappers, receptacles, advertisements, letters, postcards, documents, and/or other materials in their possession, custody, or control that display any mark belonging to Delta (including the DELTA, WIDGET LOGO, and SKYMILES marks), along with all means of making or affixing the same pursuant to Section 36 of the Lanham Act, 15 U.S.C. § 1118;
- (c) Special and general damages in an amount to be proved at trial, including, but not limited to, all profits received by Defendants from sales and revenues of any kind made as a result of Defendants' infringing and diluting actions;
- (d) The trebling of its damages pursuant to statutory law cited herein;
- (e) Punitive and exemplary damages in an amount to be proven at trial;
- (f) Reasonable attorney fees herein;

- (g) Costs of suit incurred herein;
- (h) An order directing Defendants to file with this Court and to serve upon Delta within thirty (30) days after entry of the order a sworn written statement setting forth the manner, form, and details of Defendants' compliance with the other terms of the Court's order(s) and judgment herein; and
- (i) Such other and further relief as this Court deems just and proper.

This 9th day of December, 2013.

WELLBORN, WALLACE & WOODARD, LLC

/s Paul F. Wellborn III

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DELTA AIR LINES, INC.,)

Plaintiff,)

v.)

Case No.)

1:13-CV-03388-TCB)

JOHN WUNDER; BRIDGEWATER MARKETING,)
LLC dba TIER 3 PRODUCTIONS; TRAVEL CLUB)
MARKETING BROKERS, LLC; CLASSIC)
PROMOTIONS & PREMIUMS, INC.; JOHN)
VANGINHOVEN; JAMES CURTIS LEMLEY;)
NATIONWIDE TRAVEL PROMOTIONS; KING)
TRAVEL PROMOTIONS; AMERICAN TRAVEL)
SUPPLIERS; CHRISTI WIGLE; CHELSEE FLY;)
ROB FLY; ORBITAL PROMOTIONS; ORACLE)
TRAVEL PROMOTIONS; SB GLOBAL)
MARKETING, LLC; LAURENT HAZOUT; SARA)
BAYLISS; KESSLER CREATIVE, LLC; KEITH)
KESSLER; DINA KESSLER; MAIL TO YOU, LLC;)
MAILHOUSE, LLC; BRAD FRY; INFLUENCE)
DIRECT, LLC; ANDY RIDDLE; JEREMY)
CROSSLIN; NETWORK CONSULTING)
ASSOCIATES, INC.; JOHN ANDERSON; JODY)
RITTER; JOHN ELMER; ALLSTAR MARKETING)
DIRECT, LLC; AERIE DAVIS; GRAND)
INCENTIVES, INC.; JOSE MARTINEZ; GRACE)
MARTINEZ; JD & T ENTERPRISES, INC.; DELTA)
SKY REWARDS, LLC; PRESCIENT MARKETING,)
LLC; MEREDITH SARVER; AND)
JOHN DOES 1-50,)

Defendants.)

**RULE 7.1 CERTIFICATE OF
COMPLIANCE WITH LOCAL RULE 5.1**

This certifies that the foregoing First Amended Complaint for Injunction and Damages was prepared using 14 point Times New Roman font and accordingly complies with Local Rule 5.1. This certificate is given in compliance with Local Rule 7.1(D).

This 9th day of December, 2013.

WELLBORN, WALLACE & WOODARD, LLC

/s Paul F. Wellborn III

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