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COOLEY GODWARD KRONISH LLP
JOHN W. CRITTENDEN (101634) (jcrittenden@cooley.com)
KATHLEEN E. JOHNSTON (232353) (kjohnston@cooley.com)
NICOLE L. FUENTES (259803) (nfuentes@cooley.com)
101 California Street
5th Floor
San Francisco, CA 94111-5800
Telephone: (415) 693-2000
Facsimile: (415) 693-2222

Attorneys for Plaintiffs
CROWDSTAR INC. and
CROWDSTAR INTERNATIONAL LIMITED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 10 1721

CROWDSTAR INC., a Delaware corporation,
and CROWDSTAR INTERNATIONAL
LIMITED, an Ireland company,

Plaintiffs,

v.

WONDERHILL INC., a Delaware
corporation,

Defendant.

Case No.

COMPLAINT FOR DAMAGES AND
PERMANENT INJUNCTION FOR
COPYRIGHT INFRINGEMENT AND
UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

FILED
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RICHARD W. WILSON
CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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1 Plaintiffs Crowdstar Inc. and Crowdstar International Limited hereby allege as follows:

2 **PARTIES**

3 1. Plaintiff Crowdstar Inc. is a Delaware corporation having its principal place of
4 business at 625 Ellis Street, Suite 301, Mountain View, California, 94043.

5 2. Plaintiff Crowdstar International Limited is a private limited company legally
6 organized under the laws of Ireland, having an address of Suite 4 Anglesea House, Carysfort
7 Avenue Blackrock, Co. Dublin, Ireland. Crowdstar Inc. and Crowdstar International Limited
8 shall be referred to collectively herein as "Crowdstar" or "Plaintiffs."

9 3. On information and belief, Defendant WonderHill Inc. ("WonderHill") is a
10 Delaware corporation having its principal place of business at 703 Market Street, San Francisco,
11 California, 94103.

12 **JURISDICTION AND VENUE**

13 4. This Court has jurisdiction of this action under 17 U.S.C. § 501 and 28 U.S.C. §§
14 1331, 1338, and 1367.

15 5. This Court has personal jurisdiction over Defendant in that Defendant's willful
16 actions herein alleged took place in and/or caused tortious injury to Crowdstar in this jurisdiction.

17 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391, as this is a judicial
18 district in which a substantial part of the events giving rise to the claims occurred.

19 **GENERAL ALLEGATIONS**

20 7. Crowdstar is a leading developer of original social gaming software for the
21 Facebook platform ("Facebook"). Crowdstar is consistently among the top three game companies
22 in user volume on Facebook. Among other successful titles, Crowdstar's portfolio of social
23 applications for Facebook includes the Happy Aquarium™ application ("Happy Aquarium").

24 8. Happy Aquarium has been available to use on Facebook since at least as early as
25 September 4, 2009. Since its launch, Happy Aquarium has achieved immense popularity among
26 Facebook users. As of March 4, 2010, Happy Aquarium had over 26 million monthly active
27 users, making it the seventh most popular application on Facebook.

28 9. Happy Aquarium is an animated game, the basic premise of which is to allow

1 users to create and maintain their own virtual aquarium on Facebook. Users start by visiting the
2 “store” and purchasing fish, decorations and backgrounds with virtual game currency. Once users
3 create their own aquarium, they must keep the aquarium clean by clicking on a brush icon and
4 using the brush to scrub their tanks. Users must also keep their fish fed, by clicking on a fish
5 food icon and then virtually tapping the fish food across the top of the tank. Users may also
6 perform a variety of tasks to earn coins, which they can use to purchase additional fish and
7 accessories for their aquarium, such as food, props, coral, and colored tank gravel. Users then
8 “train” their fish by taking them through an obstacle course, earning coins and making their fish
9 more valuable.

10 **10.** The game is interactive, allowing users to share their aquarium experience with
11 members of their Facebook network (“friends”). For example, Happy Aquarium users can post
12 updates about their achievements, and also visit their friends’ aquariums, clean their friends’
13 aquariums, or send their friends free gifts (such as decorations, coral or plants).

14 **11.** In addition, a signature feature of Happy Aquarium is a function that allows fish to
15 “mate” by doing a distinctive mating dance to a backdrop of hearts and romantic music, provided
16 that certain conditions exist. If the mating dance works, the fish produce an egg.

17 **12.** Crowdstar has spent considerable resources developing an original format, game
18 sequence, and compilation of elements that is quite distinctive from the other aquarium
19 applications. It is this unique combination of elements that has garnered over 26 million monthly
20 users and has made Happy Aquarium the most popular aquarium game by a substantial margin.

21 **13.** Not only do a variety of exclusive features distinguish Happy Aquarium from
22 other aquarium applications on Facebook, but the simplified look and feel of the game is distinct
23 as well. As a leading online gaming industry publication explained, “[c]artoony visuals and
24 forgiving game design make this an experience well-suited to gamers who don’t have the time or
25 patience to commit to the massive fish farms of Fish World or Fishville [other competing
26 aquarium games]. While much of the game shares common themes with other aquarium sims on
27 Facebook, *Happy Aquarium does a good deal to set itself apart and create a truly unique*
28 *experience.*”

**FIRST CAUSE OF ACTION
FOR COPYRIGHT INFRINGEMENT**

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3 **14.** Crowdstar incorporates by reference paragraphs 1 through 13, inclusive, as if fully
4 set forth here.

5 **15.** The Happy Aquarium application is copyrightable subject matter under the laws of
6 the United States. Crowdstar is, and at all relevant times has been, the owner of all right, title and
7 interest in the Happy Aquarium application, including all copyrights therein.

8 **16.** Crowdstar has complied in all respects with the Copyright Act and all other laws
9 governing copyright, and secured the exclusive rights and privileges in and to the copyright of
10 said Happy Aquarium application, and has applied for a copyright registration by the Register of
11 Copyrights. Crowdstar is the owner of copyright registration number TX 7-117-794 for Happy
12 Aquarium, issued by The United States Copyright Office and effective as of March 25, 2010.

13 **17.** Defendant WonderHill is a “casual gaming” company that originally provided its
14 games through its own website and through MySpace.com and, on information and belief, only
15 recently began to penetrate the Facebook social gaming application market. This information and
16 belief is based on news articles published about WonderHill. Crowdstar and WonderHill are
17 direct competitors.

18 **18.** On information and belief, Defendant has had access to the Happy Aquarium
19 application, due to the widespread, viral publication and dissemination of Happy Aquarium
20 across Facebook. Based on Defendant’s development of applications for and operation of Pages
21 on Facebook, Crowdstar is informed and believes that Defendant and/or its agents are registered
22 users of Facebook. Defendant has therefore had ample opportunity to view—and copy—
23 Crowdstar’s copyrighted material since the time of Happy Aquarium’s inception on Facebook.

24 **19.** In or about January 2010, Defendant launched a copycat application on Facebook
25 under the name “Aquarium Life,” which infringed and continues to infringe Crowdstar’s
26 copyright in Happy Aquarium, in violation of 17 U.S.C. § 501 *et. seq.* On information and belief,
27 Defendant’s copycat application was copied from the Happy Aquarium application. Said
28 information and belief is based on the high popularity and wide dissemination of Happy

1 Aquarium during the period before Aquarium Life was launched, and a visual comparison of the
2 user interface and game play sequencing used for Defendant's copycat application to that of the
3 Happy Aquarium application.

4 **20.** Aquarium Life is an aquarium application that that any ordinary reasonable user of
5 Facebook could confuse with Happy Aquarium. Unlike other aquarium game competitors,
6 Defendant did much more than just use the *idea* or necessary functional elements of an interactive
7 aquarium game. Rather, as described in more detail below, Defendant produced a clone of Happy
8 Aquarium by copying the unique elements and distinctive arrangement constituting Crowdstar's
9 protected expression.

10 **21.** Aquarium Life is substantially similar to Happy Aquarium both objectively and
11 subjectively. Attached hereto as Exhibit A and incorporated by reference is a true and correct
12 copy of screen shots of scenes of the primary user interfaces in Happy Aquarium and Aquarium
13 Life as they appeared on or about January 25, 2010, accessible on the World Wide Web through
14 the Facebook platform, at the respective URL addresses ([http://apps.facebook.com/happy-](http://apps.facebook.com/happy-aquarium/)
15 [aquarium/](http://apps.facebook.com/happy-aquarium/) and <http://apps.facebook.com/aquarium-life/>). From these screen shots, it is
16 immediately apparent that the total concept and feel of the two games are substantially similar.

17 **22.** The game design and user interface layout of the two games is virtually identical.
18 For example, as depicted in Exhibit A, Happy Aquarium and Aquarium Life share numerous
19 features, arranged and sequenced in a substantially similar manner. Aquarium Life is a clone of
20 Happy Aquarium.

21 **23.** Specifically, Defendant copied not only the *idea* of caring for an aquarium, but
22 also the arrangement, and look and feel, of the acclaimed Happy Aquarium user interface, as well
23 as the particular technique and sequence by which users execute tasks and the expression that
24 represents the various actions. Defendant also copied Crowdstar's unique combination and
25 sequence of elements of game play.

26 **24.** As illustrated in Exhibit A, the following elements of the user interface are nearly
27 identical in each game:

- 28 • Across the top of the screen from the left side are nearly identical icons on

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a blue bar using the same language in the same order as follows: “send food,” “play,” “free gifts,” “invite friends,” and “support.” The sole difference in Aquarium Life is the addition of the icon “get rubies” between “invite friends” and “support.”

- In the upper right corner, both screens display the game’s name in logo format with a similar look and feel, immediately under Facebook’s standard “become a fan” button.
- The second menu bar from the top in each game contains (from left to right) on a blue background: a large number representing the user’s level, an experience meter labeled “XP” that gauges a user’s “experience points” earned by maintaining the aquarium; a money meter (with both a coin and a precious stone icon representing the two forms of game currency) that counts the a user’s virtual money; an icon used to purchase additional game currency; an oblong green meter that measures “cleanliness” oriented immediately above an oblong red meter that measures “hunger;” and an icon that allows visiting users to vote for the aquarium.
- The third row of icons from the top in both games, both located inside the aquarium tank along its bottom and oriented on the left side of the screen, contain: a mini-store icon depicted as an A-frame building with an entrance facing towards the user on the right, an arrow tool pointing up and to the left; a cylindrical fish food shaker icon used for feeding the fish; a square-headed brush on a long handle for cleaning the tank, drawn with the business end of the brush pointing down and to the left; and a hand icon to tap the tank and cause the fish to react, depicted as a left hand pointing its pointer finger up and to the right with a sunburst graphic around its tip, thumb extended.
- At the same level at the bottom of the tank, oriented on the right side, the row of icons contains: a music note icon consisting of two connected notes

1 indicating a decrease on the scale, for toggling music on and off; a right-
2 facing conical shaped speaker icon for toggling sound effects on and off, a
3 rectangular icon for toggling between regular view and full screen view,
4 and a fish counter showing the number of fish in the tank, a forward slash,
5 the tank's fish capacity, and a fish-shaped icon facing left.

6 25. Not only is the artwork for the icons in each menu bar nearly identical, but in both
7 games the distinct *manner* that each icon is *used* is indistinguishable – for example, in both games
8 the user clicks on the brush to “pick it up” and clicks the brush over the glass to clean his
9 aquarium, an action which earns the user “experience points.” Also, in both games, the user
10 clicks the fish food bottle to “pick it up” and feeds the fish by clicking the bottle across the top of
11 the aquarium, an action which causes the fish to eat the food and recharge both main red “hunger”
12 meter, as well as mini individual “hunger” meters that appear below each fish.

13 26. In addition to using an identical user interface and set of icons, Defendant cloned
14 various original Happy Aquarium plot lines, including the following:

- 15 • When a user enters the aquarium in both games, he finds a substantially
16 similar treasure chest that provides thirty new coins each day, which he can
17 collect by clicking on the chest.
- 18 • In both games, the chest sits next to a substantially similar sign made out of
19 driftwood that reads “click here.”
- 20 • After the user has collected his daily allotment of coins, Crowdstar's sign
21 reads “more tomorrow,” and Defendant's reads “tomorrow.”
- 22 • In both games, users can click on each of their friends' treasure chests once
23 a day to earn additional coins.
- 24 • Users in both games earn XP's (experience points) and coins by visiting
25 often, cleaning their tanks, feeding their fish, and visiting their friends to do
26 the same things for them.
- 27 • Users in both games can use the coins they earned to purchase items in a
28 mini-store.

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- Both games have two types of currency: coins, which are easy to earn, and precious stones (represented by pearls in Happy Aquarium and rubies in Aquarium life), which must be purchased using small amounts of real money and can be used to get premium game items.
- In both games, a user enters the mini-store by clicking on a substantially similar “store” icon below the aquarium and, once he enters the store, the sequence of events and layout of both stores is the same. The first screen in the store is a grid of “products,” on top of which are “tabs” that a user can click on to see substantially similar categories of products – food, fish, gravel, coral, etc.
- Both games allow a user to send a “free gift” to a friend through the store interface or icons on the main user interface.

27. Most strikingly, however, Defendant has unabashedly cloned Happy Aquarium’s signature fish mating sequence, mimicking every aspect of the expression contained therein. Not only did Defendant copy the distinctive cartoon sequence, pace, and mood of the mating fish dance, replete with the hearts and music in the background, but it also copied the pop-up windows and the instructions contained therein word for word.

28. Attached hereto as Exhibit B and incorporated by reference is a true and correct copy of screen shots of scenes of the “mating sequence” in Happy Aquarium and Aquarium Life as they appeared on or about November 20, 2009 and March 22, 2010 by accessing them on the World Wide Web through the Facebook platform, at the respective URL addresses (<http://apps.facebook.com/happy-aquarium/> and <http://apps.facebook.com/aquarium-life/>).

29. Defendant has created a copycat mating sequence in Aquarium Life that uses the exact same series of events (and exact same text) as used in Happy Aquarium’s original mating dance.

30. In both games, when a user clicks the “mate” button below a certain fish, a pop-up window appears that contains the exact same language in each game: As shown in the first page of Exhibit B, this same window in both games displays the same heading, centered and in bold

1 text, "Try to Mate?" above a romance-themed graphic. Below that graphic, both windows read:
2 "Chances of success are 80%" and "fish can only mate once a day." Below that text are a coin
3 icon and a number, which indicates how many coins it will cost to mate that particular fish. If the
4 user decides that he wants to pay the price to try to mate that particular fish, then he must click a
5 green check mark depicted in an air bubble on the left below the coin icon. Otherwise, to cancel,
6 the user clicks the red x depicted in an air bubble on the right.

7 **31.** In both games, when a user attempts to mate two fish and the proper conditions or
8 requirements for mating do not exist, then a pop-up window appears that contains the exact same
9 language in each game. As shown in the second page of Exhibit B, that window in both games
10 has three parts: (1) the heading "Almost There!" in dark blue text; (2) set apart from the heading
11 and the list below, the text: "In order for your fish to fall in love and try to make a baby you
12 need:"; and (3) in white text on a blue background, a substantially similar list of the requirements,
13 namely a clean healthy tank, fish that are fed, 2 adult fish of the same species, 1 male, 1 female,
14 and fish can only mate once a day.

15 **32.** In both games, when a user attempts to mate two fish and the "proper conditions"
16 do exist, then the fish do a mating dance that contains a substantially similar sequence, pace,
17 mood, and overall creative impression. Specifically, in both games, the fish perform their
18 "mating dance" to a romantic musical jingle, while red heart cartoons flash over the two fish who
19 are mating. In each game, if the mating is successful, then the fish lay an egg, which will hatch
20 into a new fish after several hours. The third page of Exhibit B depicts a still screen capture from
21 each game taken during that action sequence.

22 **33.** Upon discovering Defendant's infringing activity, Crowdstar sent a letter to
23 Defendant, identifying the infringement and demanding that Defendant permanently remove the
24 game from Facebook. Defendant has since made changes to the original infringing copycat
25 application in an attempt to conceal its copying. Attached hereto as Exhibit C and incorporated by
26 reference is a true and correct copy of screen shots of scenes of primary user interfaces in Happy
27 Aquarium and Aquarium Life as they appeared on or about March 10, 2010 by accessing them on
28 the World Wide Web through the Facebook platform, at the respective URL addresses

1 (<http://apps.facebook.com/happy-aquarium/> and <http://apps.facebook.com/aquarium-life/>).

2 **34.** The changes that Defendant apparently made to the Aquarium Life interface after
3 it received Crowdstar's letter are evident upon comparing Exhibit C (March 10, 2010 screen shots
4 of "starter aquariums") to Exhibit A (January 25, 2010 screen shots of "starter aquariums").
5 Defendant primarily made inconsequential changes, such as moving the user interface buttons and
6 mirroring them (i.e., swapping the buttons from top to bottom, and right to left). Defendant also
7 made minor cosmetic changes to the artwork for some icons, such as the cleaning brush, the mini-
8 store, the treasure receptacle, and the message on the treasure receptacle sign.

9 **35.** Yet the trivial changes that Defendant has made to Happy Aquarium since it
10 received Crowdstar's letter have not rectified the pervasive similarity between the two games, nor
11 would a typical user of Facebook casual games be likely to notice the difference. On the
12 contrary, the insignificant alterations on which Defendant relies further highlights the extent to
13 which it deliberately copied Crowdstar's creative expression in Happy Aquarium.

14 **36.** Moreover, due to the viral and exponential nature of user growth in Facebook
15 applications, Defendant's changes do not cure the harm caused by the initial launch of the clone.
16 This is because the popularity of Facebook applications increases exponentially as a user invites
17 his friends to use a certain application, their friends invite other friends, and so on. In this case,
18 users that were drawn to Aquarium Life by the same aesthetic feel and creative expression that
19 Defendants cloned from Happy Aquarium have since invited their friends to use the Aquarium
20 Life application. Those friends have since invited other friends, and so. It is therefore impossible
21 to reverse the effect of this viral spreading because, months after the initial launch, Aquarium Life
22 has already disseminated at an exponential rate.

23 **37.** At the very least, despite the minor alterations, Defendant's copycat application
24 remains a derivative work of Happy Aquarium, and thus infringes Crowdstar's copyright therein.

25 **38.** At no time has Crowdstar authorized Defendant to reproduce, distribute or prepare
26 derivative works based upon Crowdstar's Happy Aquarium. Crowdstar has notified Defendant of
27 the infringement, but Defendant has continued to infringe Crowdstar's copyright.

28 **39.** Defendant's infringement of Crowdstar's copyright in Happy Aquarium has

1 caused, and will continue to cause, irreparable injury to Crowdstar's business, goodwill and
2 reputation. Crowdstar has no adequate remedy at law for the injury it is suffering.

3 40. Unless Defendant is restrained by appropriate injunctive relief from operating the
4 Aquarium Life application, Crowdstar will suffer an immediate and irreparable injury through
5 lost user volume. There is no adequate remedy at law to protect Crowdstar against such harm.

6 41. Crowdstar is informed and believes, and on that basis alleges, that Defendant has
7 reaped and will reap profits as a result of the copyright infringement alleged herein.

8 42. Crowdstar also has suffered damages as a result of Defendant's infringement of
9 Crowdstar's copyright in an amount to be determined at trial. Crowdstar's damages include at
10 least the following specific elements:

11 a. User-generated advertising revenue lost to date, with losses continuing on a
12 daily basis.

13 b. Because Crowdstar also earns money from the sale of virtual coins
14 (executed with credit card and mobile phone payments through Facebook), Crowdstar has lost
15 revenue from lost coin sales as a result of losing users to Aquarium Life.

16 c. Disruption in Crowdstar's business and lost productivity caused by the
17 need to investigate and challenge Defendant's unlawful actions.

18 d. Damage to Crowdstar's brand and reputation.

19 e. Unjust profit earned by Defendant as a result of misappropriation of
20 Crowdstar's valuable intellectual property.

21 SECOND CAUSE OF ACTION

22 FOR CALIFORNIA STATUTORY UNFAIR COMPETITION

23 43. Crowdstar incorporates by reference paragraphs 1 through 43, inclusive, as if fully
24 set forth here.

25 44. By the acts described herein, Defendant has engaged in unlawful, unfair and
26 fraudulent business practices that have injured and will continue to injure Crowdstar in its
27 business and property, in violation of California Business and Professions Code §§ 17200 *et seq.*

28 45. On information and belief, Defendant has cloned the Happy Aquarium setting,

1 interface, and plot line with the intent to mislead users into thinking that Happy Aquarium and the
2 copycat Aquarium Life were the same application.

3 46. Upon information and belief, Defendant engaged in such deceptive and misleading
4 business practices for the purpose of profiting from the user traffic generated by Happy
5 Aquarium's hard-earned popularity among Facebook users.

6 47. Defendant's acts alleged herein have caused monetary damages to Crowdstar in an
7 amount to be proven at trial, and have caused, and will continue to cause, irreparable injury to
8 Crowdstar and its business, reputation, and trademarks, unless and until Defendant is
9 permanently enjoined.

10 48. As a direct and proximate result of Defendant's conduct alleged herein, Defendant
11 has been unjustly enriched and should be ordered to disgorge any and all profits that it earns or
12 has earned as a result of such unlawful conduct.

13 PRAYER FOR RELIEF

14 **Wherefore**, Crowdstar prays for relief as follows:

15 49. For a preliminary and permanent injunction requiring Defendant to refrain from
16 infringing Plaintiff's copyrights in Happy Aquarium and to cease any and all beneficial use of
17 Aquarium Life obtained through its unlawful acts as alleged herein;

18 50. That Defendant, its agents, servants, employees, and all other persons acting in
19 concert or participating with them, be preliminary and permanently enjoined from:

- 20 a. Using, or attempting to use the Aquarium Life or any derivative thereof;
21 b. Copying or reproducing any documents or other things containing in any
22 manner Aquarium Life;

23 51. For an Order that Defendant identify and account for all Facebook users diverted
24 from Crowdstar to Defendant as a result of its actions alleged herein, and to cause the transfer of
25 such users to Crowdstar.

26 52. For an Order pursuant to 17 U.S.C. § 503, requiring Defendant to deliver up all
27 copies of the Aquarium Life application, including any derivatives or modified versions thereof,
28 and any applications based on the copycat Aquarium Life application, in its possession, custody

1 or control, and for an order directing the destruction or other reasonable disposition of the same;

2 53. For an accounting of the gain and profits derived by Defendant through its
3 infringement of Crowdstar's copyrights;

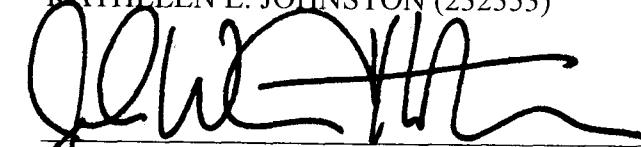
4 54. For actual damages and any additional profits of Defendant according to proof at
5 trial pursuant to 17 U.S.C. § 504;

6 55. For an order of restitution according to proof at trial; and

7 56. For such other and further relief as this Court deems just and proper.
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9 Dated: April 21, 2010

COOLEY GODWARD KRONISH LLP
JOHN W. CRITTENDEN (101634)
KATHLEEN E. JOHNSTON (232353)


John W. Crittenden (101634)
Attorneys for Plaintiffs
CROWDSTAR INC. and CROWDSTAR
INTERNATIONAL LIMITED

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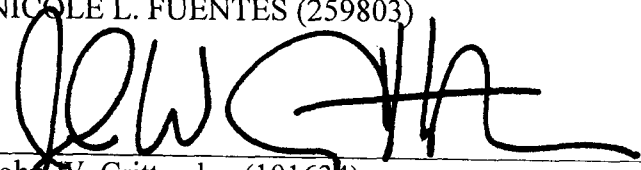
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DEMAND FOR JURY TRIAL

Plaintiff Crowdstar, Inc. hereby requests a trial by jury.

Dated: April 21, 2010

COOLEY GODWARD KRONISH LLP
JOHN W. CRITTENDEN (101634)
KATHLEEN E. JOHNSTON (232353)
NICOLE L. FUENTES (259803)



John W. Crittenden (101634)
Attorneys for Plaintiffs
CROWDSTAR INC. and CROWDSTAR
INTERNATIONAL LIMITED