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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>FRANKLINCOVEY CO., Plaintiff, v. LYCOS, INC., and DOES 1-5, Defendants.</p>	<p>COMPLAINT Civil No. _____ Judge _____ (Jury Demanded)</p>
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Plaintiff FranklinCovey Co. (“FranklinCovey”) complains of Defendants Lycos, Inc., and Does 1-5 (collectively “Defendants”) and alleges as follows:

NATURE OF THE ACTION AND RELIEF SOUGHT

1. This action is based on Defendants’ unauthorized and infringing use of FranklinCovey’s famous, top-selling book *The 7 Habits of Highly Effective People* (“*The 7 Habits*”), which book is the subject of multiple federal copyright registrations, identified below. FranklinCovey and its predecessors have invested immense resources in creating, adapting, and promoting *The 7 Habits*, which is one of FranklinCovey’s core products. Notwithstanding FranklinCovey’s exclusive rights in *The 7 Habits*, Defendants have wrongfully and without

permission reproduced, posted, and/or maintained a digital copy of *The 7 Habits*, in its entirety, on the website at the domain names angelfire.com and angelfire.lycos.com. FranklinCovey has notified Defendant Lycos, Inc. (“Lycos”), of this infringement—directed to its designated agent to receive notices of infringement and also to its general counsel—demanding that Lycos remove this infringing content from the website or disable access to it, but Lycos has ignored these demands. Defendants’ willful and continuing infringement of FranklinCovey’s copyrights is in violation of federal law and FranklinCovey’s intellectual property rights. In addition to monetary damages, FranklinCovey seeks injunctive relief barring any continued unauthorized use by Defendants of FranklinCovey’s copyrights.

THE PARTIES

2. Plaintiff FranklinCovey is a Utah limited liability company with its principal place of business at 2200 West Parkway Blvd, Salt Lake City, Utah 84119.

3. On information and belief, Defendant Lycos is a Virginia Corporation with its principal place of business at 100 Fifth Ave., Waltham, Massachusetts 02451.

4. On information and belief, Does 1-5 are (a) partners, joint venturers, or affiliates of Defendants; and/or (b) individuals or entities that have engaged in, participated in, contributed to, and/or have the ability to control the unlawful and infringing activities described herein. FranklinCovey does not presently know the identities and capacities of the Doe defendants. FranklinCovey will amend this Complaint to include such information when it is ascertained.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

6. On information and belief, this Court has personal jurisdiction over Defendants, pursuant to Utah Code Ann. § 78-27-24(1), (3), due to their transacting and doing business in this state and conducting infringing activity in this state.

7. On information and belief, venue is proper in this district and division pursuant to 28 U.S.C. § 1391(b), (c).

FRANKLINCovey'S RIGHTS IN *THE 7 HABITS*

8. FranklinCovey is a leading global provider of business planning and organization products and training. Created in 1997 by the merger of Franklin Quest Inc. and the Covey Leadership Center, two successful organization training companies, FranklinCovey has served a list of clients worldwide that include the majority of Fortune 500 companies.

9. One of the signature product lines offered by FranklinCovey is based on the *The 7 Habits*, which was authored by Dr. Stephen R. Covey and published in 1989. This book and related materials, planning tools, and training courses form a core service offered by FranklinCovey.

10. FranklinCovey owns federally registered copyrights protecting *The 7 Habits*. (See Certificates of Copyright Registration nos. TX 2-680-685 and TX 5-257-785, attached respectively as Exhibits 1-2.) Due to the high profile of the book and the usefulness of the principles it outlines, the exclusive right to exploit these properties is one of FranklinCovey's most important assets.

11. Since the publication of *The 7 Habits*, the Covey Leadership Center, and then its successor FranklinCovey Co., have invested enormous sums in developing and marketing concepts, training tools, and publications that draw on *The 7 Habits*.

12. *The 7 Habits* has been an integral part of FranklinCovey's success, and is one of the central pillars of the company's sales and branding efforts.

DEFENDANTS' UNAUTHORIZED USE OF THE 7 HABITS

13. On information and belief, Defendants own, operate, control, and/or have the ability to post content and have posted content on a website at www.angelfire.com and www.angelfire.lycos.com (the "Angelfire website").

14. The Angelfire website offers free space, as well as paid subscriptions, for internet users to post blogs, photo galleries, and other information.

15. Notwithstanding FranklinCovey's exclusive rights in *The 7 Habits*, Defendants have made and continue to make unauthorized use of that work on the Angelfire website.

16. Specifically, Defendants have posted and/or maintained a digital copy of *The 7 Habits*, in its entirety, on the Angelfire website at the following URL:

<http://www.angelfire.com/trek/covey/The.Seven.Habits.Of.Highly.Effective.People.pdf>.

17. Defendants' unauthorized posting and/or maintenance of an entire copy of *The 7 Habits* is a clear and deliberate infringement of FranklinCovey's copyrights.

DEFENDANTS' INFRINGEMENT IS WILLFUL

18. On information and belief, Defendants are engaged in a conscious and willful effort to infringe on FranklinCovey's copyrights described herein.

19. On August 2, 2007, pursuant to 17 U.S.C. § 512, FranklinCovey sent a "Notice of Copyright Infringement" via electronic mail, both in the electronic mail itself and also in PDF format as an attachment to the email, to the agent Lycos had designated to receive notices of copyright infringement. The Notice detailed FranklinCovey's rights in *The 7 Habits* and demanded that Lycos remove or disable access to *The 7 Habits* on the Angelfire website. (*See*

Notice of Copyright Infringement, attached as Exhibit 3.) As a result, Lycos was specifically apprised of FranklinCovey's rights in *The 7 Habits*, and was specifically informed that FranklinCovey objected to this unlawful and unauthorized use of this work.

20. Lycos failed to respond to FranklinCovey's notice and demand, and Lycos has otherwise ignored the notice and demand by failing to remove or disable access to the copyrighted work.

21. On August 9, 2007, FranklinCovey sent a "Second Notice of Copyright Infringement" via Federal Express to Lycos's general counsel, again detailing the infringing activities on the Angelfire website, reciting Lycos's failure to respond to the prior notice of infringement, and warning Lycos that FranklinCovey would seek relief in court if Lycos did not expeditiously remove or disable access to the copyrighted works. (*See* Second Notice of Copyright Infringement attached as Exhibit 4.)

22. Lycos failed to respond to FranklinCovey's second notice and demand, and Lycos has otherwise ignored the second notice and demand by failing to remove or disable access to the copyrighted work.

23. At present, the digital copy of *The 7 Habits*, in its entirety, remains on Defendants' website.

RESULTING HARM TO FRANKLINCOVEY

24. FranklinCovey has not licensed or otherwise permitted Defendants to use *The 7 Habits*. Such use was and is unauthorized.

25. The infringing use of FranklinCovey's copyrights in that work by Defendants has damaged FranklinCovey.

26. Moreover, as long as Defendants continue their unauthorized use of *The 7 Habits*, FranklinCovey will suffer irreparable harm and will be prevented from exploiting the full value of its copyrights.

27. Defendants' unlawful acts complained of herein will continue unless Defendants are enjoined by this Court from further violations of FranklinCovey's rights.

CLAIM FOR RELIEF
(Copyright Infringement)

28. FranklinCovey realleges and incorporates by this reference the preceding paragraphs of this Complaint as if fully set forth herein.

29. FranklinCovey is the owner of federally registered copyrights in *The 7 Habits* as described above.

30. These works are original works of authorship, and are copyrightable subject matter under the laws of the United States.

31. Without FranklinCovey's authorization or permission, Defendants have copied, reproduced, distributed, displayed, maintained, and/or created derivative works of *The 7 Habits* on or in connection with the Angelfire website and/or assisted or provided the means to facilitate or allow such conduct.

32. Defendants have thus infringed FranklinCovey's copyrights in *The 7 Habits* in violation of 17 U.S.C. § 501.

33. Defendants' infringement is direct, contributory, and/or by inducement.

34. Based on Defendants' failure to expeditiously remove or disable access to this infringement, notwithstanding their actual knowledge thereof, Defendants have waived any defense to liability they may otherwise have had pursuant to 17 U.S.C. § 512 or otherwise.

35. Moreover, given Defendants' continued use of *The 7 Habits* notwithstanding their actual knowledge of the infringement and their lack of authorization to reproduce or otherwise use FranklinCovey's copyrighted material, and/or the fact that Defendants have copied *The 7 Habits* wholesale, Defendants' infringement is willful.

36. Defendants' acts of copyright infringement have caused FranklinCovey actual damages in an amount to be proven at trial.

37. In addition to FranklinCovey's actual damages suffered as a result of the infringement, FranklinCovey is also entitled to recover Defendants' profits attributable to the infringement, pursuant to 17 U.S.C. § 504.

38. In the alternative, FranklinCovey is entitled to statutory damages pursuant to 17 U.S.C. § 504(c), and these statutory damages should be enhanced in accord with 17 U.S.C. § 504(c)(2) as a result of Defendants' willful infringement.

39. Pursuant to 17 U.S.C. § 505, FranklinCovey is entitled to recover its attorney fees and costs of suit from Defendants.

40. FranklinCovey is being irreparably harmed by Defendants' infringement of its federally registered copyrights, and FranklinCovey has no adequate remedy at law. Thus, pursuant to 17 U.S.C. § 502, FranklinCovey is entitled to temporary, preliminary, and permanent injunctive relief barring Defendants from engaging in further acts of copyright infringement.

41. FranklinCovey is further entitled to the immediate impoundment during the pendency of this litigation of all physical or electronic copies of the copyrighted works made or used in violation of FranklinCovey's copyrights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies may be reproduced, and to the destruction thereof upon entry of judgment in this matter.

PRAYER FOR RELIEF

WHEREFORE, FranklinCovey respectfully prays for the following relief:

1. That Defendants, their officers, directors, members, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with Defendants, or any of them, be temporarily, preliminarily, and then permanently enjoined and restrained from:

a. directly or indirectly using in commerce, copying, reproducing, manufacturing, importing, exporting, advertising, displaying, circulating, publishing, selling, offering for sale, or distributing anything whatsoever protected by U.S.

Certificates of Copyright Registration nos. TX 2-680-685 and TX 5-257-785, namely *The 7 Habits of Highly Effective People*, in whole or in part, and from preparing derivative works or adaptations thereof.

b. engaging in any other activity constituting an infringement of any of FranklinCovey's copyrights, or of FranklinCovey's rights in, or right to use or to exploit, these copyrights; and

c. assisting, aiding, or abetting, or contributing to or inducing, any other individual or entity in engaging in or performing any of the activities referred to in subparagraphs a. through b. above.

2. For an order that each Defendant be directed to file with this Court, and serve on FranklinCovey within thirty days after the service of any injunction order, a report in writing, under oath, setting forth in detail the manner and form in which that Defendant has complied with the injunction.

3. For an order that Defendants be required to surrender and deliver up to FranklinCovey:

a. All physical and electronic copies, reproductions, derivative works, adaptations, or other uses of FranklinCovey's copyrights, in whole or in part, and in any medium whatsoever, and all plates, molds, matrices, masters, tapes, film negatives, or other means of making the same.

b. all records documenting the copying, reproduction, adaptation, use, manufacture, dissemination, distribution, posting, sale, offering for sale, purchase, receipt, and advertising of FranklinCovey's copyrighted works, including, but not limited to, documents evidencing the source of the materials used in such activities, the identities of the persons engaging in such activities, the identities of the persons to whom such copies, reproductions, adaptations, and uses of such copyrights have been disseminated, distributed, or sold, the URLs at which any copies, reproductions, adaptations, or uses of the copyrighted works have been posted and/or maintained, and Defendants' profits in connection with any and all of the foregoing; and

c. a list of the names and addresses of all persons or other entities whom Defendant knows or has reason to know that have participated in any infringement of FranklinCovey's copyrights.

4. For an order that on the conclusion of this proceeding FranklinCovey is authorized by the Court to dispose of any items surrendered and delivered up to FranklinCovey by the Defendants pursuant to paragraph 3, or otherwise, at FranklinCovey's discretion.

5. That FranklinCovey be awarded its actual damages, in an amount to be proven at trial.

6. That Defendants account to FranklinCovey for Defendants' profits arising from the acts complained of herein, and that FranklinCovey be awarded such profits.

7. That FranklinCovey be awarded applicable statutory damages, in the event it so elects and/or actual damages are not proven, in an amount no less than \$300,000.

8. That FranklinCovey be awarded pre- and postjudgment interest.

9. That FranklinCovey be awarded its costs of suit, including reasonable attorney fees.

10. That FranklinCovey be awarded such other and further relief as the Court deems just and proper.

DATED this 17th day of December, 2007.

RAY QUINNEY & NEBEKER P.C.

/s/ Arthur B. Berger

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