

CIVIL COVER SHEET

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS
VIRGIN AMERICA, INC., a Delaware Corporation.
(b) County of Residence of First Listed Plaintiff San Mateo County, California
(EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorney's (Firm Name, Address, and Telephone Number)
Rodger R. Cole Mashhood Rassam
FENWICK & WEST LLP FENWICK & WEST LLP
801 California Street 801 California Street
Mountain View, CA 94041 Mountain View, CA 94041
(650)988-8500 (650)988-8500

DEFENDANTS
ADRANTS PUBLISHING, LLC, a Massachusetts limited liability company; STEVE HALL, an individual; ANGELA NATIVIDAD, an individual; and NINA ALDREDGE, an individual.
County of Residence of First Listed Defendant Middlesex County, Massachusetts
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)
Citizen of This State PTF DEF
Citizen of Another State PTF DEF
Citizen or Subject of a Foreign Country PTF DEF
Incorporated or Principal Place of Business In This State PTF DEF
Incorporated and Principal Place of Business In Another State PTF DEF
Foreign Nation PTF DEF

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each cell contains a list of legal categories with checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Lanham Act, 15 U.S.C. §§ 1051-1127, California Business and Professions Code §§ 14330 and 17500 et seq., and California Civil Code §§ 44, et seq.
Brief description of cause: COMPLAINT FOR TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN AND FALSE AND DECEPTIVE ADVERTISING, TRADEMARK DILUTION, FALSE AND MISLEADING STATEMENTS, DILUTION IN VIOLATION OF CALIFORNIA LAW, AND DEFAMATION.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS To be determined at trial

CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

SAN FRANCISCO/OAKLAND

SAN JOSE

DATE  
01/26/2009

SIGNATURE OF ATTORNEY OF RECORD



COPY

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
MOUNTAIN VIEW

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Attorneys for Plaintiff  
Virgin America, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CV 09

09337

VIRGIN AMERICA, INC., a Delaware Corporation,

Plaintiff,

vs.

ADRANTS PUBLISHING, LLC, a Massachusetts limited liability company; STEVE HALL, an individual; ANGELA NATIVIDAD, an individual; and NINA ALDREDGE, an individual,

Defendants.

Case No.:

**COMPLAINT FOR TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN AND FALSE AND DECEPTIVE ADVERTISING, TRADEMARK DILUTION, FALSE AND MISLEADING STATEMENTS, DILUTION IN VIOLATION OF CALIFORNIA LAW, AND DEFAMATION**

**DEMAND FOR JURY TRIAL**

**CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

B7

09-11-26 PM 2:19  
U.S. DISTRICT COURT  
SAN FRANCISCO, CALIFORNIA

1 Plaintiff Virgin America, Inc. (“Virgin America” or “Plaintiff”) hereby alleges for its  
2 claims for relief against Defendants Adrants Publishing, LLC (“Adrants Publishing”), Steve Hall  
3 (“Hall”), Angela Natividad (“Natividad”) and Nina Aldredge (“Aldredge”) (collectively,  
4 “Defendants”) on personal knowledge as to its own actions and on information and belief as to  
5 the actions of others, as follows:

6 **INTRODUCTION**

7 Virgin America brings this action for trademark and trade name infringement, false  
8 designation of origin and false and deceptive advertising, trademark dilution, false and misleading  
9 statements, and defamation all arising in connection with Defendants’ use of the trade name and  
10 mark “Virgin America.” Specifically, on January 18, 2009 Plaintiff discovered on the website  
11 <http://adrants.com> (“Adrants.com”), published by Adrants Publishing, a false Virgin America  
12 advertisement at URL [http://www.adrants.com/2009/01/the-hudson-crash-just-one-more-](http://www.adrants.com/2009/01/the-hudson-crash-just-one-more-reason.php)  
13 [reason.php](http://www.adrants.com/2009/01/the-hudson-crash-just-one-more-reason.php). The advertisement consisted of a photograph of the crash of US Airways flight 1549  
14 from January 15, 2009 depicted under the heading “The Hudson Crash: Just One More Reason to  
15 Fly Virgin.” The posting had an express assertion by Adrants Co-Editor Natividad about the  
16 apparent validity of the Virgin America advertisement. However, the depicted photograph was  
17 not a Virgin America advertisement and the advertisement was in no way sponsored by or  
18 affiliated with Virgin America. Defendants’ posting of the false advertisement on the  
19 Adrants.com website was likely to cause consumer confusion as to source, affiliation or  
20 sponsorship; was likely to and tended to dilute and tarnish the distinctive nature of and reputation  
21 ascribed to Virgin America’s famous name and trademark; and was likely to generate the false  
22 belief among consumers that Virgin America had sponsored, endorsed, was affiliated with, and  
23 supported Defendants and Adrants.com; all in violation of Virgin America’s rights pursuant to the  
24 Lanham Act, 15 U.S.C. §§ 1051-1127, California Business and Professions Code §§ 14330 and  
25 17500 *et seq.*, California Civil Code §§ 44, *et seq.*, and the common law.

**THE PARTIES**

1  
2 1. Plaintiff Virgin America is a corporation organized and existing under the laws of  
3 Delaware, is registered to do business in the State of California, and has its principal place of  
4 business at 555 Airport Blvd., Burlingame, CA 94010.

5 2. Virgin America is informed and believes, and on that basis alleges, that Adrants  
6 Publishing is, and at all relevant times was, a limited liability corporation existing under the laws  
7 of Massachusetts, and has its principal place of business at 27 Bryanwood Lane, Groton, MA  
8 01450. Adrants Publishing publishes the website Adrants.com.

9 3. Virgin America is informed and believes, and on that basis alleges, that Defendant  
10 Hall is a natural person residing in the state of Massachusetts.

11 4. Virgin America is informed and believes, and on that basis alleges, that Defendant  
12 Natividad is a natural person residing in the state of California.

13 5. Virgin America is informed and believes, and on that basis alleges, that Defendant  
14 Aldredge is a natural person residing in the state of New York.

**JURISDICTION AND VENUE**

15  
16 6. This Court has jurisdiction over this action pursuant to 15 U.S.C. §§ 1121  
17 (trademarks, trade and corporate names) *et seq.*, and 28 U.S.C. §§ 1331 (federal question), 1338  
18 (trademarks), and 1367 (supplemental jurisdiction).

19 7. Venue is proper in this district pursuant to 28 U.S.C. §1391(b). Plaintiff Virgin  
20 America is headquartered and operates its airline in this district, and a substantial part of the  
21 events and injury giving rise to the claims set forth herein occurred in this district. On  
22 information and belief, Defendants impermissibly used trademarks and trade names owned by  
23 Virgin America via the Adrants.com website in this district.

**INTRADISTRICT ASSIGNMENT**

24  
25 8. Assignment of this action to the San Francisco Division is proper under Civil  
26 Local Rules 3-2(c) and 3-2(d), in that, on information and belief, a substantial part of the events  
27 giving rise to the claims alleged herein occurred in Walnut Creek and in the County of Contra  
28 Costa.

1 **STATEMENT OF FACTS**

2 **The Parties**

3 9. Virgin America is a California-based airline that began service in August 2007,  
4 and provides its passengers with high-quality award winning service between major metropolitan  
5 cities in the United States.

6 10. Adrants Publishing publishes the website Adrants.com. On information and  
7 belief, Adrants.com is a well known and popular website that purports to provide marketing and  
8 advertising news online and in the form of a daily email newsletter.

9 11. On information and belief, Defendants Hall and Natividad are co-editors of  
10 Adrants.com.

11 **Virgin America’s Name and Mark**

12 12. Plaintiff has used the Virgin America name and logo (hereinafter, “VIRGIN  
13 AMERICIA NAME AND MARK”) and has been using this well-known mark since 2007.

14 13. Virgin America’s success and recognition as a new, high-quality airline is well-  
15 documented. Indeed, Virgin America has captured a list of travel industry best-in-class awards,  
16 including: “Best Domestic Airline” by *Condé Nast Traveler*; “Best Domestic Airline” in *Travel +*  
17 *Leisure* World’s Best Awards; and No. 1 among U.S. carriers for quality in First Class in Zagat’s  
18 2007 and 2008 Global Airlines Survey.

19 14. Since 2007, Virgin America has spent millions of dollars to market, advertise and  
20 otherwise promote the Virgin America brand, trade name, trademark and services.

21 15. As a consequence of Virgin America’s success and extensive sales, marketing, and  
22 advertising in interstate commerce, the VIRGIN AMERICA NAME AND MARK have become  
23 well known among the general consuming public as identifying designations for Virgin  
24 America’s products and services. Virgin America has, at great expense and effort, developed  
25 tremendous goodwill, recognition and fame in the VIRGIN AMERICA NAME AND MARK.  
26 As a result, the VIRGIN AMERICA NAME AND MARK have become famous and valuable  
27 assets of Virgin America, and principal symbols of its extensive goodwill.  
28

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ATTORNEYS AT LAW  
MOUNTAIN VIEW

1           16.     The Virgin American name and logo are a registered trademarks and/or registered  
2 service marks of Virgin America in the United States. Virgin America owns the federal  
3 trademark registrations and/or common law rights on the VIRGIN AMERICA NAME AND  
4 MARK. This federal registration is valid, in full force and effect, and constitutes evidence of  
5 Plaintiff's exclusive right to use the VIRGIN AMERICA NAME AND MARK in connection  
6 with goods and services set forth in the registration.

7     **Fabricated Virgin America Advertisement**

8           17.     On information and belief, on January 15, 2009 at 6 p.m. EST, Defendant  
9 Natividad received from Defendant Aldredge a false Virgin America advertisement which she  
10 posted on the Adrants Publishing website.

11           18.     The advertisement, which was posted on Adrants.com at URL  
12 <http://www.adrants.com/2009/01/the-hudson-crash-just-one-more-reason.php>, consisted of a  
13 photograph of the crash of US Airways flight 1549 on January 15, 2009 depicted under the  
14 heading "The Hudson Crash: Just One More Reason to Fly Virgin."

15           19.     In the explanation from Adrants Publishing that accompanied the posting,  
16 defendant Natividad explained that "we've seen Virgin turn ugly situations to its advantage  
17 before, making it [the fake advertisement] very much in keeping with the Virgin brand persona.  
18 The only thing saving the tribute from being in terrifically bad taste is the fact no one lost his or  
19 her life in the crash. So woot! -- slather your big reds all over those news shots, V."

20           20.     Defendant Natividad went on to add in another comment below this explanation  
21 that "we've received legitimate ads this way before: civilian email, with little or no explanation  
22 in the body. Just sayin'."

23           21.     Nothing could be further from the truth. The depicted photograph was not a  
24 Virgin America advertisement and the advertisement was in no way sponsored by or affiliated  
25 with Virgin America. In fact, Virgin America deplors the fact that anyone would try to take  
26 advantage of the crash of flight 1549.

27           22.     Virgin America employees learned of this false advertisement at 11:23 p.m. on  
28 January 17, 2009.

1           23.     On January 18, 2009 at approximately 8:30 a.m. PST, Abby Lunardini, Virgin  
2 America's Director of Corporate Communications called Hall and left a message on his voicemail  
3 asking that this false advertisement be removed from Adrants.com. At 8:46 a.m. PST, Ms.  
4 Lunardini sent Hall an email noting that the posting "is absolutely not an official Virgin America  
5 advertisement and is in no way affiliated with our company. We, like the rest of the country,  
6 cannot compliment Captain Sullenburger, his crew, and US Airways enough for their heroic  
7 actions. We are extremely disturbed that anyone would try to take advantage of this accident, and  
8 we plan to take legal action against whoever made this false and malicious web posting. ... Our  
9 attorneys are putting together a formal letter given that this is a false ad and is a deliberate misuse  
10 of our trademark. Given this, it would be much appreciated if you could take down the post in the  
11 interim."

12           24.     At 11:18 a.m. PST, Rodger R. Cole of Fenwick & West LLP, attorneys for Virgin  
13 America, sent Hall, Natividad, and Aldredge an email and demanded that the ad be removed from  
14 the Adrants.com website and "that (1) you [Hall, Natividad and Aldredge] make no further  
15 distribution the photograph falsely portrayed at [http://www.adrants.com/2009/01/the-hudson-](http://www.adrants.com/2009/01/the-hudson-crash-just-one-more-reason.php)  
16 [crash-just-one-more-reason.php](http://www.adrants.com/2009/01/the-hudson-crash-just-one-more-reason.php), (2) you provide Virgin America with the names of the  
17 individual(s) who created the false photograph, and (3) Adrants post an apology and retraction on  
18 its website for falsely associating Virgin America with the fake advertisement."

19           25.     In that same email Mr. Cole also pointed out that by saying "we've seen Virgin  
20 turn ugly situations to its advantage before," Defendants had grossly misrepresented Virgin  
21 America. Indeed, Mr. Cole explained that "Virgin America, like the rest of the country, cannot  
22 compliment Captain Sullenburger, his crew, and US Airways enough for their heroic actions,"  
23 and that "Virgin America is extremely disturbed that anyone would try to take advantage of this  
24 accident."

25           26.     In response, at approximately 3:48 p.m. PST, instead of removing the false ad,  
26 Defendant Natividad posted the following on Adrants.com regarding the false advertisement:  
27 "UPDATE: Clearly, this ad is fake. A spoof. Virgin America has confirmed this. We were always  
28



1 suspect from the get go and didn't mean to mislead or misrepresent. So we'll state it clearly now:  
2 the ad is a spoof. It's not real. Virgin America had nothing to do with its creation.”

3 27. At 8:11 p.m. Mr. Cole sent Defendant Hall another email stating: “Dear Mr. Hall -  
4 - Thank you for posting the ‘UPDATE’ on your website at [http://www.adrants.com/2009/01/the-](http://www.adrants.com/2009/01/the-hudson-crash-just-one-more-reason.php)  
5 [hudson-crash-just-one-more-reason.php](http://www.adrants.com/2009/01/the-hudson-crash-just-one-more-reason.php). However, given the earlier portrayal of the image as an  
6 actual Virgin America advertisement, Adrants must remove the Virgin America image attached to  
7 the US Airways crash to mitigate the damage Virgin America has suffered and continues to suffer  
8 for Adrants' posting. Please take down the posting as soon as possible and confirm once you have  
9 done so. If Adrants chooses not to remove the posting, Virgin America will be forced to escalate  
10 the issue.”

11 28. On information and belief, the false advertisement was not removed from the  
12 Adrants.com website until sometime on the morning of January 19, 2009.

13 29. Following the removal of this posting there was no retraction or other comment  
14 from Adrants despite the false ad having been posted on the world wide internet for over three  
15 days (72 hours).

16 30. To date, Defendants have not admitted fault for posting the false ad, have not  
17 provided Virgin America any information regarding its origins and have not informed Virgin  
18 America how widely the ad was disseminated.

19 **FIRST CLAIM FOR RELIEF**  
20 **(Infringement of Federally Registered Trademarks and Service Marks)**  
21 **[Violation of 15 U.S.C. § 1114]**

22 31. Plaintiff realleges and incorporates paragraphs 1-30 above into this Claim for  
23 Relief as if set forth herein.

24 32. Defendants posted or caused to be posted on the Adrants.com website a false  
25 advertisement using the federally registered VIRGIN AMERICA NAME AND MARK.

26 33. On information and belief, Defendants knew or by the exercise of reasonable care  
27 should have known that depiction of the VIRGIN AMERICA NAME AND MARK in the false  
28 advertisement on the Adrants.com website would cause confusion, mistake, or deception among  
customers or potential customers of Virgin America and the public.

1 34. The foregoing actions by Defendants violate Plaintiff's rights under Section 32 of  
2 the Lanham Act, 15 U.S.C. § 1114, and, on information and belief, have been knowing,  
3 deliberate, willful, intended to cause confusion or mistake, or to deceive, and in disregard of  
4 Plaintiff's rights.

5 35. As a direct and proximate cause of Defendants' wrongful conduct, Plaintiff has  
6 been and will be deprived of the value of its federally registered marks as commercial assets in an  
7 amount as yet unknown but to be determined at trial.

8 **SECOND CLAIM FOR RELIEF**  
9 **(False Designation of Origin and False and Deceptive Advertising)**  
10 **[Violation of 15 U.S.C. § 1125(a)(1)(B)]**

11 36. Plaintiff realleges and incorporates paragraphs 1-35 above into this claim for  
12 Relief as if set forth herein.

13 37. Defendants have, by posting or causing to be posted the false advertisement on  
14 Adrants.com, made false or misleading representations of origin and false and misleading  
15 representations of fact, which misrepresent the nature, characteristics, and qualities of Virgin  
16 America.

17 38. The foregoing actions of Defendants violate Section 43 of the Lanham Act, 15  
18 U.S.C. § 1125(a)(1)(B), and, on information and belief, have been knowing, deliberate, willful,  
19 intended to cause mistake and to deceive, and in disregard of Virgin America's rights.

20 39. As a direct and proximate result of Defendants' false advertising in violation of 15  
21 U.S.C. § 1125(a)(1)(B), Virgin America has suffered or is likely to suffer damages, in an amount  
22 not yet ascertained and to be determined at trial.

23 **THIRD CLAIM FOR RELIEF**  
24 **(Dilution in Violation of Federal Law)**  
25 **[15 U.S.C. § 1125(c)]**

26 40. Plaintiff realleges and incorporates paragraphs 1-39 above into this Claim for  
27 Relief as if set forth herein.

28 41. The VIRGIN AMERICA NAMES AND MARKS are famous and distinctive, both  
inherently and through acquired distinctiveness, and are entitled to protection against dilution and  
tarnishment.

1           42. Defendants misused the VIRGIN AMERICA NAMES AND MARKS after they  
 2 had become famous and distinctive.

3           43. By placing the VIRGIN AMERICAN NAMES AND MARKS in a fabricated ad  
 4 and posting said ad on a well-known commercial advertising web site Defendants have injured  
 5 Virgin America’s business reputation, have diluted and tarnished the distinctive quality of Virgin  
 6 America’s famous VIRGIN AMERICA NAMES AND MARKS, and have lessened the capacity  
 7 of Virgin America’s famous VIRGIN AMERICA NAMES AND MARKS to identify and  
 8 distinguish goods and services of Virgin America’s products in violation of 15 U.S.C. §§ 1125(c)  
 9 and 1127.

10           44. As a direct and proximate result of Defendants’ dilution and tarnishment of the  
 11 VIRGIN AMERICA NAMES AND MARKS in violation of 15 U.S.C. §§ 1125(c) and 1127,  
 12 Virgin America has suffered great and irreparable harm. Virgin America has been and will be  
 13 deprived of substantial sales of its services in an amount as yet unknown but to be proved at trial,  
 14 and has been and will be deprived of the value of its federally registered name and marks as  
 15 commercial assets in an amount as yet unknown but to be determined at trial.

16                           **FOURTH CLAIM FOR RELIEF**  
 17                           **(False & Misleading Statements)**

18                           [Cal. Bus. and Prof. Code § 17500 *et seq.*]

19           45. Plaintiff realleges and incorporates paragraphs 1-44 alleged above into this Claim  
 20 for Relief as if set forth herein.

21           46. By using the VIRGIN AMERICA NAMES AND MARKS in a fabricated  
 22 advertisement Defendants have made false and misleading statements which were and are known  
 23 or which, by the exercise of reasonable care, should have been known to Defendants to be false  
 24 and misleading in violation of California Business and Professions Code sections 17500 *et seq.*

25           47. Defendants’ use of the VIRGIN AMERICA NAMES AND MARKS is in  
 26 violation and derogation of Virgin America’s rights and is likely to cause confusion, mistake, and  
 27 deception among consumers and the public as to the source, origin, sponsorship, or quality of  
 28 Plaintiffs’ goods and services, thereby causing loss, damage and injury to Virgin America and to

1 the purchasing public. On information and belief, Defendants knew or should have known that  
2 their conduct was likely to mislead the public.

3 48. The foregoing actions of Defendants violate Virgin America's rights under  
4 California Business & Professions Code sections 17500 *et seq.* and, on information and belief,  
5 have been knowing, deliberate, willful, intended to cause mistake and to deceive, and in disregard  
6 of Plaintiff's rights.

7 49. As a direct and proximate result of Defendants' false and misleading statements in  
8 violation of California Business and Professions Code sections 17500 *et. seq.*, Plaintiff has  
9 suffered and will continue to suffer great and irreparable harm.

10 **FIFTH CLAIM FOR RELIEF**  
11 **(Dilution in Violation of California Law)**  
12 [Cal. Bus. and Prof. Code § 14330]

13 50. Plaintiff realleges and incorporates paragraphs 1-49 alleged above into this Claim  
14 for Relief as if set forth herein.

15 51. Defendants, by use of the VIRGIN AMERICA NAMES AND MARKS have  
16 injured and will continue to injure Virgin America's business reputation, and have diluted and  
17 will continue to dilute the distinctive quality of the VIRIGN AMEIRCA NAMES AND MARKS  
18 in violation of California Business and Professions Code section 14330.

19 52. As a direct and proximate result of Defendants' dilution in violation of California  
20 Business and Professions Code sections 14330, Plaintiff has suffered and will continue to suffer  
21 great and irreparable harm.

22 **SIXTH CLAIM FOR RELIEF**  
23 **(Defamation)**  
24 (Cal. Civil Code §§ 44, *et seq.*)

25 53. Plaintiff realleges and incorporates paragraphs 1-52 alleged above into this Claim  
26 for Relief as if set forth herein.

27 54. The fake advertisement posted on Adrants.com and the accompanying  
28 commentary by defendant Natividad contain unprivileged, false, misleading and disparaging  
statements as described above.

1 55. Such defamatory statements are harmful to Virgin America's reputation. Third  
2 parties, including customers and potential customers, read these statements.

3 56. Those who read and heard the defamatory statements understood them in a way  
4 that defamed Virgin America and caused injury to its professional reputation.

5 57. The defamatory statements constitute defamation *per se* in violation of California  
6 Civil Code § 45(a) because they clearly and directly injure Virgin America with respect to its  
7 professional reputation by imputing to it improper conduct.

8 58. The purpose and effect of Defendants' defamatory statements have been to injure  
9 Virgin America and hinder Virgin America's ability to market and sell its services and products.

10 59. As a direct and proximate result of Defendants' publication of the defamatory  
11 statements, Virgin America has suffered loss to its reputation and general damages in an amount  
12 not yet ascertainable. Accordingly, Virgin America is entitled to recover actual damages in an  
13 amount to be proven at trial.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Virgin America prays for judgment against Defendants as follows:

16 1. Defendants and Defendants' officers, agents, servants, employees, attorneys, and  
17 all others in active concert or in participation with Defendants, or who receive actual notice of the  
18 injunction, to be permanently enjoined from creating or disseminating fabricated Virgin America  
19 advertisements or in any way using VIRGIN AMERICA NAMES AND MARKS;

20 2. Virgin America be awarded up to three times its damages caused by Defendants'  
21 unlawful conduct as proven at trial;

22 3. Virgin America be awarded exemplary and punitive damages;

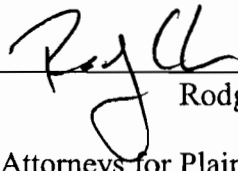
23 4. Virgin America be awarded its reasonable attorneys' fees and costs; and  
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5. Virgin America be awarded such other relief as the Court deems just and proper.

Dated: January 26, 2009

FENWICK & WEST LLP

By:   
Rodger R. Cole  
Attorneys for Plaintiff  
VIRGIN AMERICA, INC.

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
MOUNTAIN VIEW

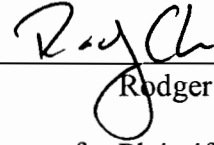
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims.

Dated: January 26, 2009

FENWICK & WEST LLP

By:



Rodger R. Cole

Attorneys for Plaintiff  
VIRGIN AMERICA, INC.

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
MOUNTAIN VIEW

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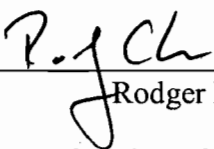
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**CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: January 26, 2009

FENWICK & WEST LLP

By:   
Rodger R. Cole  
Attorneys for Plaintiff  
VIRGIN AMERICA, INC.

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