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STATE OF INDIANA	)	THE HAMILTON SUPERIOR COURT 01
COUNTY OF HAMILTON	)	CASE NO. 29D01-0912-CC- <u>3706</u>
LEON ISAAC KENNEDY, an	)	
Individual,	)	
Plaintiff,	)	
vs.	)	
GODADDY, INC.,	)	
SPIRIT MEDIA, ARTHUR	)	
PHOENIX, an Individual,	)	
and JOHN DOE DEFENDANTS	)	
1-5,	)	
Defendants.	)	

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

Comes now Plaintiff, Leon Isaac Kennedy, individual (hereinafter "KENNEDY"), by counsel, and for his Complaint for Damages and Injunctive Relief (the "Complaint"), hereby alleges and states as follows as against defendants GoDaddy, Inc. (hereinafter "GoDaddy"), Spirit Media (hereinafter "SM"), Arthur Phoenix, an individual (hereinafter "AP") and JOHN DOE DEFENDANTS 1-5 (hereinafter referred to as "Does"). (GoDaddy, SM, AP and DOES may be hereinafter collectively referred to as the "Defendants"):

**I. THE PARTIES.**

1. Leon Isaac Kennedy (KENNEDY), is a well-known actor and a minister, residing in Burbank, California, and the owner and proprietor of all interests in and to his name, image, likeness, and / or voice (the "Kennedy Right of Publicity") as well as certain other intellectual property rights, including, but not limited to, certain trademarks, copyrights, and / or rights of

association as associated with the Kennedy Right of Publicity (hereinafter collectively the "Kennedy Intellectual Property").

2. Defendant GoDaddy is an entity located at 14455 North Hayden Road, Suite 226, Scottsdale, Arizona 85260, is an Internet domain name registration service provider, and is the current registrar for the domain name www.leonisaackennedy.com (the "Domain").

3. Upon information and belief, Defendant SM is entity located at P.O. Box 43591, Phoenix, Arizona 85080 and is the registrant and / owner of the Domain.

4. Upon information and belief, Defendant AP is an individual located at P.O. Box 43591, Phoenix, Arizona 85080 and the registrant of the Domain.

5. Upon information and belief, JOHN DOES are individuals and / or legal entities whose identities and contact information are protected by Defendants GoDaddy, SMG and / or SM and AP.

## **II. JURISDICTION.**

6. Jurisdiction and venue are proper in this Court pursuant to Ind. Code § 33-28-1-2 and Ind. Tr. Rule 75(A)(1), T.R. 75(A)(2), T.R. 75(A)(4), and T.R. (A)(8).

## **III. BACKGROUND.**

7. KENNEDY is an American actor, producer, and writer, best known for his performance as "Too Sweet" in 1979's Penitentiary and its sequels. As a result of his widely recognized career, various commercial rights of substantial value have been attached to KENNEDYS's name, image and likeness (the Kennedy Right of Publicity). The Kennedy Right of Publicity and the afore-described and related Kennedy Intellectual Property Rights are proprietary rights and / or interests recognized and protected by the common law as well as various state and federal statutes.

8. At all times pertinent hereto, the Defendants have registered and subsequently displayed the Domain without authorization.

9. Moreover, Defendants have offered the Domain for sale for \$5,000 at a domain auction that associates the Domain with KENNEDY and the Kennedy Intellectual Property, including but not limited to the Kennedy Right of Publicity, further demonstrating the inherent value associated with the Kennedy Intellectual Property, including but not limited to the Kennedy Right of Publicity, and in an attempt to trade off the value, notoriety and goodwill associated with the Domain and the Kennedy Right of Publicity, further demonstrating the inherent value associated with the Kennedy Intellectual Property. See Exhibit 1 attached hereto.

10. This unauthorized commercial use and registration of the Domain constitutes an unauthorized and illegal commercial use of the Kennedy Right of Publicity and / or the Kennedy Intellectual Property Rights and / or otherwise violates KENNEDY's personal and / or property rights.

11. By way of Defendants' unauthorized commercial use of the Kennedy Right of Publicity and / or the Kennedy Intellectual Property Rights through the registration and / or display of the Domain and by, in essence, despite KENNEDY's demands for return of control of the Domain, by holding the Domain hostage, at all times relevant hereto, Defendants have siphoned the goodwill and reputation associated not only with the Kennedy Right of Publicity and / or the Kennedy Intellectual Property Rights, but also with KENNEDY's business interests, thereby necessitating the present action.

12. As noted hereinabove, Defendants do not now have, nor have they ever had, KENNEDY's permission and / or approval to commercially exploit the Kennedy Intellectual

Property Rights and, likewise, Defendants' unauthorized commercial use of the Kennedy Intellectual Property rights is a use that KENNEDY did not and would not have ever authorized.

13. Since the date of registration, each and every one of the Defendants, with knowledge of KENNEDY's ownership of the Kennedy Right of Publicity and / or the Kennedy Intellectual Property, has not now nor ever placed any content on the Domain and, instead, has "parked" the domain name in direct contravention to Federal law, specifically, the United States Anti Cybersquatting Piracy Act. 15 U.S.C. § 1125(d).

14. In an attempt to conceal its identity and avoid liability pursuant to the claims herein made by KENNEDY as against each and every one of the Defendants, Defendants SM, AP, and Does registered the Domain via GoDaddy, a web service that allows cybersquatters such as Defendants SM, AP, and / or Does to keep their personal information private while still retaining the ability to "park" a domain in the hope that the owner of the rights in and to the domain name by virtue of United States Trademark law and common law right of publicity will pay, without cause, the unauthorized registrant for the domain name.

15. It is well settled under the laws of the United States, that any use of another's intellectual property by way of utilizing a mark confusingly similar to that of another and / or registering and owning a domain name that is the same and / or confusingly similar to another, is prohibited as trademark infringement under the Lanham Act, 15 U.S.C. §1114, *et. seq.* and 15 U.S.C. § 1125(d).

16. Defendants' unauthorized and illegal commercial use of the Kennedy Right of Publicity and / or the Kennedy Intellectual Property Rights, has resulted in irreparable harm to KENNEDY that cannot otherwise be redressed without an injunction ordering the immediate transfer of the Domain to KENNEDY.

**COUNT I**  
**VIOLATION OF SECTION 1125 (a) OF THE LANHAM ACT**

18. KENNEDY repeats and realleges the allegations in Paragraphs 1. through 15.

19. At all times pertinent hereto each and every one of the Defendants have used the Kennedy Intellectual Property, including but not limited to the Kennedy Right of Publicity, by registering the Domain, misleading consumers and Internet users to a parked website, owned and operated by Defendants, thereby causing confusion among the public as to the ownership, sponsorship and / or endorsement of the Domain by KENNEDY who is and can be the only rightful owner of the Domain.

20. Each and every one of the Defendants have registered, displayed, and have attempted to trade off the value and goodwill associated with the Domain which actions are likely to cause confusion, to cause mistakes, or to deceive as to the affiliation, connection or association to the Kennedy Intellectual Property Rights in violation of section 1125 (a) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

21. KENNEDY has been and will continue to be irreparably harmed as a result of Defendants' misconduct as herein alleged unless and until Defendants are, collectively and / or individually, preliminarily enjoined from the use of the Kennedy Intellectual Property and Domain.

**COUNT II**  
**VIOLATION OF SECTION 1125 (d) OF THE LANHAM ACT**

22. KENNEDY repeats and realleges the allegations in Paragraphs 1. through 21.

23. Defendants have registered, used, and attempted to auction the Domain, in bad faith and in such a manner as to constitute the use of KENNEDY's entire name and that is

identical to the well-known Leon Isaac Kennedy name intending to profit from the name. 15

U.S.C. § 1125(d)(1)(A)(i).

24. Defendants have registered, used, and attempted to auction the Domain in such a manner as to constitute the use of KENNEDY's entire name and that is identical to the well-known Leon Isaac Kennedy name in violation of section 1125 (d) of the Lanham Act, 15 U.S.C. § 1125(d)(1)(A)(ii)(I).

25. Defendants' registration, use, attempted auction, and display of the Domain constitutes dilution of a well-known mark which was famous at the time of DEFENDANTS' registration of the Domain. 15 U.S.C. § 1125(d)(1)(A)(ii)(II).

26. Defendants have registered, used, attempted to auction, and displayed the Domain in bad faith because Defendants have registered the Domain without ever intending to use it themselves in good faith and only to eventually retail the Domain at auction as have been Defendants' practice and as is the case for having been left blank (yet displayed) for as long as KENNEDY has been aware for the purpose of making profit from sales of the Domain, in violation of section 1125 (d) of the Lanham Act, 15 U.S.C. § 1125(d)(1)(B)(i)(VI).

27. Defendants have registered, used, attempted to auction, and displayed the Domain in such a manner as is likely to cause confusion with respect to the Kennedy Right of Publicity, further demonstrating the inherent value associated with the Kennedy Intellectual Property in bad faith as follows:

a. Defendants have registered the Domain which consists of the legal name owned by KENNEDY or a name that is otherwise commonly used to identify KENNEDY, the well-known actor. 15 U.S.C. § 1125(d)(1)(B)(ii) and

b. Defendants have registered the Domain in order to divert consumers to a site accessible under the Domain that could harm the goodwill represented by the Kennedy Intellectual Property, including but not limited to the Kennedy Right of Publicity, further demonstrating the inherent value associated

with either for commercial gain or with the intent to tarnish or disparage the Kennedy Intellectual Property, including but not limited to the Kennedy Right of Publicity, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site. 15 U.S.C. § 1125(d)(1)(B)(i)(v).

28. Defendants' violation of the Lanham Act has caused KENNEDY to suffer damages not yet ascertainable but which continue to accrue and accumulate, in an amount to be proven at trial.

**COUNT III**  
**UNFAIR COMPETITION**

29. KENNEDY repeats and realleges the allegations in Paragraphs 1. through 28.

30. The wrongful acts or representations made by each and every one of the Defendants as more fully described and hereby incorporated herein constitute unfair competition because such acts represents to third party consumers of each and every one of Defendants' goods and / or services are sponsored, approved, associated with, and / or provided by KENNEDY.

31. The conduct, acts, and representations of each and every one of Defendants have caused KENNEDY to suffer damages in a sum as yet to be ascertained and which damages continue to accrue and accumulate.

32. KENNEDY is entitled to recover any and all remedies, including treble damages, costs, and attorneys' fees from each and every one of the Defendants as a result of each and every one of the Defendant's unlawful and infringing actions.

**COUNT IV**  
**VIOLATION OF INDIANA RIGHT OF PUBLICITY (I.C. §32-36-1-1)**

33. KENNEDY repeats and realleges the allegations in Paragraphs 1. through 32.

34. KENNEDY is a personality as defined under Indiana law whose name, image and likeness (the Kennedy Right of Publicity) has value.

35. KENNEDY has continuously used and protected the Kennedy Right of Publicity from misuse since the Kennedy Intellectual Property, including but not limited to the Kennedy Right of Publicity, became well known.

36. At all times relevant hereto, each and every one of the Defendants have commercially utilized and therefore exploited the Kennedy Right of Publicity without prior express (or otherwise) authorization for Defendants' own personal gain.

37. Defendants' unauthorized commercial uses of the Kennedy Right of Publicity on and / or in association with the Domain, as more fully described hereinabove, have been for the purpose of Defendants' unlawfully obtaining advertising revenue, sales revenue, notoriety, and to earn continuous service fee.

38. As a result of each and every one of Defendants' violation of Indiana's Right of Publicity statute (I.C. §32-36-1-1 et seq.) as more fully detailed herein, KENNEDY has suffered damages not yet ascertainable but which continue to accrue and accumulate, in an amount to be proven at trial.

39. Under the Indiana Right of Publicity Statute (IC §§32-36-1-10, 11), each and every one of Defendants are liable for any and all damages sustained by KENNEDY; Defendants are liable in the amount of statutory, actual and punitive damages; and KENNEDY is entitled to any profits from the unauthorized uses that are attributable to the use and are not taken into account in computing the actual damages.

40. Under the Indiana Right of Publicity Statute, KENNEDY, having been irreparably harmed by Defendants' actions with regard to Defendants' unauthorized and infringing commercial misuse of the Kennedy Right of Publicity, is entitled to injunctive relief for the



purposes of protecting the aforementioned rights and preventing further economic harm to KENNEDY. (IC §32-36-1-12).

**COUNT V**  
**CONVERSION (I.C. § 35-43-4-3)**

41. KENNEDY repeats and realleges the allegations in Paragraphs 1. through 40.

42. KENNEDY is the sole and exclusive owner of the Kennedy Intellectual Property including but not limited to the Kennedy Right of Publicity.

43. The Kennedy Intellectual Property Rights, including but not limited to the Kennedy Right of Publicity, are property rights, descendable and transferrable, under Indiana law.

44. By engaging in the conduct as described and by holding the Domain hostage without authorization and only for the purpose of each and every one of Defendants' commercial benefit, despite KENNEDY's demands for the return of the Domain, each and every one of Defendants has exerted unauthorized control over the property of another. In so doing each and every one of the Defendants have committed conversion and have proximately caused KENNEDY to suffer damages in a sum as yet to be ascertained but which damages continue to accrue and accumulate.

45. KENNEDY is entitled to any and all remedies available to KENNEDY under Indiana law, including treble damages, costs, and attorneys' fees from each and every one of Defendants under I.C. § 34-24-3-1.

**COUNT VI**  
**DECEPTION I.C. § 35-43-5-3(a)(6)**

46. KENNEDY repeats and realleges the allegations in Paragraphs 1. through 45.

47. By engaging in the conduct as herein described and complained of, each and every one of the Defendants has disseminated to the public advertisements that Defendants know are false, misleading, or deceptive, with intent to promote the purchase or sale of Defendants' services, business, and / or products.

48. On the basis of Defendants' unlawful and illegal actions as herein complained of, each and every one of Defendants have committed deception as defined under Indiana law at I.C. § 35-43-5-3(a)(6).

49. Defendants' commission of deception has proximately caused KENNEDY to suffer damages in a sum as yet to be ascertained but which damages continue to accrue and accumulate.

50. KENNEDY will continue to be irreparably harmed by Defendants unless Defendants are, collectively or individually, preliminarily enjoined from their unlawful business practices which constitute deception under Indiana law.

51. KENNEDY has suffered irreparable harm and, likewise, KENNEDY's remedy at law is inadequate to prevent further violation of its rights.

**COUNT VII**  
**INDIANA CRIME VICTIMS' ACT I.C. § 35-24-3-1**

52. KENNEDY repeats and realleges the allegations in Paragraphs 1. through 51.

53. Under the Indiana Crime Victims' Act, a person that suffers pecuniary loss as a result of a violation of Ind. Code § 35-43 *et seq.*, may bring a civil action as against the person(s) who caused the loss for treble damages, costs of the action, and reasonable attorneys' fees.

54. As stated hereinbefore, each and every one of Defendants have violated I.C. § 35-43 through their knowing, intentional, willful, and malicious commission of the following

offenses: a. "Conversion" as defined in I.C. § 35-43-4-3; and b. "Deception" as defined in Ind. Code § 35-43-5-3.

55. KENNEDY is victim of each and every one of Defendants' knowing, intentional, willful, and malicious criminal violations and, as a result, has suffered actual pecuniary damages.

56. Accordingly, KENNEDY is entitled to an award as against each and every one of the Defendants of those actual damages as well as statutory treble damages, corrective advertising damages, costs, and reasonable attorneys' fees.

#### **IV. DEMAND FOR JURY.**

57. KENNEDY hereby respectfully requests that all issues herein raised by this Complaint for Damages and for Injunctive Relief be tried by Jury.

#### **V. PRAYER FOR RELIEF.**

WHEREFORE Plaintiff, Leon Isaac Kennedy, individual (hereinafter "KENNEDY"), by hereby prays for judgment as against defendants GoDaddy, Inc. (hereinafter "GoDaddy"), Spirit Media (hereinafter "SM"), Arthur Phoenix, an individual (hereinafter "AP") and JOHN DOE DEFENDANTS 1-5 (hereinafter referred to as "Does") (GoDaddy, SM, AP and DOES may be hereinafter collectively referred to as the "Defendants") where said judgment may include but may not be necessarily limited to the following relief:

a. An order directing the immediate and complete transfer, without cost to BAIO, of the domain name www.leonisaackennedy.com to KENNEDY;

b. An injunction enjoining Defendants, collectively or individually, from future use of the Kennedy Intellectual Property, including but not limited to the Kennedy Right of Publicity, as herein defined, in whatever form;

c. An order directing the immediate and complete surrender of any and all merchandise, designs, plans, marketing materials, advertisements, conceptals, etc. featuring the Kennedy Intellectual Property, including but not limited to the Kennedy Right of Publicity, to KENNEDY;

d. An award of damages, including but not necessarily limited to treble damages, costs, and attorneys' fees as set forth in the applicable statutes in an aggregate amount that is, as yet, undetermined, but which amount continues to accrue; and

e. All other just and proper relief in the premises.

Respectfully submitted,  
SOVICH MINCH LLP

By:  \_\_\_\_\_

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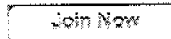
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Leon Isaac Kennedy - ex-husband of Jayne Kennedy, former NFL sportscaster and star of famous action movies such as Body and Soul, Penitentiary I, II and III, Fighting Mad, and Lone Wolf McQuade starring Chuck Norris co-starring Leon Isaac Kennedy.

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