

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

DEAN POTTER LLC, an Indiana
limited liability company,

Plaintiff,

v.

LG ELECTRONICS USA, INC., a
Delaware corporation; and DOES 1-10,
inclusive,

Defendants.

Case No. 1:19-cv-4085

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF AND

DEMAND FOR JURY TRIAL

Plaintiff, Dean Potter LLC (“Plaintiff”), by and through its attorneys of record, complains against Defendants LG Electronics USA, Inc. and DOES 1 through 10 (collectively, “Defendants”), alleging as follows:

JURISDICTION AND VENUE

1. This is a civil action against Defendants LG Electronics USA, Inc. and DOES 1 through 10 for infringement of Plaintiff’s right of publicity under Indiana Code 32-36, *et seq.*; false endorsement under 15 U.S.C. § 1125(a), unfair

competition, unjust enrichment, conversion, deception, and violation of Indiana's Crime Victims' Act, Ind. Code § 34-24-3-1 *et seq.*

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a)(2) on the grounds that the matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000 and is between citizens of a State and citizens or subject of a foreign state.

3. This Court also has subject matter jurisdiction under 15 U.S.C. § 1121 (action arising under the Lanham Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1338(a) (any Act of Congress relating to patents, copyrights, or trademarks); 28 U.S.C. § 1338(b) (action asserting claim of unfair competition joined with a substantial and related claim under the trademark laws); and 28 U.S.C. § 1367 (supplemental jurisdiction).

4. This Court has personal jurisdiction over Defendants because they have committed and continue to commit acts of infringement in violation of 35 U.S.C. § 271, 15 U.S.C. §§ 1114 and 1125, and 17 U.S.C. §§ 101 *et seq.*, and place products promoted through the infringing advertisements into the stream of commerce, with the knowledge or understanding that such products are sold in the State of Indiana, including in this District. The acts by Defendants cause injury to Plaintiff within this District.

5. Plaintiff is further informed and believes that Defendants engage in extensive commerce in this District, derive substantial revenue from the sale of products promoted through the infringing advertisements within this District, and expect their actions to have consequences within this District.

6. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) in that the claim arises in this Judicial District and the Defendants may be found and transact business in this Judicial District.

PARTIES

7. Plaintiff Dean Potter LLC is a limited liability company organized under the laws of the State of Indiana and it is the exclusive owner of the name, likeness, image, right of publicity and endorsement, trademarks, and other intellectual property rights of the late Dean Potter.

8. Plaintiff is informed and believes that Defendant LG Electronics USA, Inc. is organized under the laws of the state of Delaware with its principal place of business at 1000 Sylvan Avenue, Englewood Cliffs, New Jersey 07632.

9. The true names or capacities, whether individual, corporate or otherwise, of the Defendants named herein as DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of Court to amend this Complaint and insert the true names and capacities of said Defendants when the same have been ascertained.

10. Plaintiff is informed and believes that each of the Defendants designated herein as a “DOE” is legally responsible in some manner for the events and happenings herein alleged, and that Plaintiff’s damages as alleged herein were proximately caused by such Defendants.

FACTS COMMON TO ALL COUNTS

11. Dean Potter was a well-known extreme-sports athlete who performed daring and cinematic stunts in highlining, BASE jumping, rock climbing, and other outdoor sports. Nicknamed the “Dark Wizard,” Mr. Potter was a pioneer and visionary in his craft, often featured in National Geographic print and broadcast media, having been a National Geographic Expeditions Council grantee and an Adventurer of the Year.¹ As noted by one of his fellow rock climbers, “Most innovators do everything 5% faster or better than the person before them, but he invented entirely new sports, a lot of which few other people could repeat.”²

12. After Mr. Potter’s untimely death in 2015, the proprietary rights to his name, image, and likeness survived pursuant to state statutes, including Indiana Code § 32-36-1-1 *et seq.* and were vested in Dean Potter LLC.

¹ See <https://www.nationalgeographic.com/adventure/adventure-blog/2015/05/17/pioneering-climber-dean-potter-died-in-base-jumping-accident/>.

² See <https://www.fresnobee.com/sports/outdoors/article21316914.html>.

13. As a consequence of his prominence in the extreme outdoor sport community, Mr. Potter's name, image, and likeness have substantial commercial value.

14. At the same time, because Mr. Potter was revered for his spiritual personality, and was known to pursue his passions over fame and money, Mr. Potter and his Estate were and are careful not to exploit the commercial value of his name, image, and likeness in ways that may diminish or tarnish his legacy.

15. Mr. Potter is featured in the short film entitled *Moonwalk*, which captures the breathtaking view of Mr. Potter traversing a highline tied to Cathedral Peak in Yosemite National Park as the full moon rises in the background. The film, available at <https://vimeo.com/56298775>, was shot in 2011 and published at least as early as 2012.

16. Below is a screenshot of the iconic scene from *Moonwalk*.



17. Plaintiff is the owner of all rights, title and interest in Mr. Potter’s right of publicity and common law trademark rights in *Moonwalk*.

18. Because no one else in the world has recreated Mr. Potter’s performance in *Moonwalk*, the cinematic image is not only distinctive, but entirely unique. Mr. Potter’s likeness and performance style are recognizable as his, and the concept and execution of the feat—both the daring and difficulty of the walk and the natural beauty of the setting—makes the footage memorable and iconic.

Indeed, the publication of the film at <https://vimeo.com/56298775> credits Mr. Potter for creating the very artistic concept of *Moonwalk*.

Moonwalk

6 years ago | More



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The ultimate full moon shot. Dean Potter walks a highline at Cathedral Peak as the sun sets and rises. Shot from over 1 mile away with a Canon 800mm and 2X by Mikey Schaefer.

This shot was part of a bigger project for National Geographic called The Man Who Can Fly.

channel.nationalgeographic.com/videos/the-man-who-can-fly/

Directed by Mikey Schaefer...mikeylikesrocks.com

Produced by Bryan Smith

Concept by Dean Potter

Music:

Slate - By Wil Bolton

From the Album: Time Lapse on Hibernate Recordings

Licensed through: Audiomoves - audiomoves.com

19. ^{2 Credits} Mr. Potter's unique contribution *Moonwalk* ^{1 Category} has taken on a special poignancy and meaning to his legions of fans who, particularly after Mr. Potter's death during another daring and difficult stunt in Yosemite National Park, are keenly aware that few athletes have the courage to attempt the same highline walk as Mr. Potter, and even fewer have the mastery to succeed.

20. Mr. Potter's performance in *Moonwalk* is particularly well known in the rock-climbing community, having originally appeared in the one-hour documentary *The Man Who Could Fly*, a 2011 National Geographic television special for the Explorer series. The feature garnered widespread accolades and a

large audience for Mr. Potter’s renowned skills and feats. The footage and his daring and cinematic aerial and acrobat performances in the wilds of nature therefore became intimately and inextricably associated with Dean Potter—just as Vanna White is associated with turning letters in a gown, the actors George Wendt and John Ratzinger from television show *Cheers* are associated with sitting at the end of a bar, and Tom Waits is associated with his gruff singing voice.³

21. Plaintiff is informed and believes that Defendant LG Electronics USA, Inc. is the U.S.-based arm of one of the world’s leading electronics companies, responsible for the production, promotion, distribution, and sale of entertainment, telecommunications, and home appliance devices. Publicly available data shows that from 2008 to 2017, the LG brand consistently had the second-largest market share of the global LCD television market.⁴

22. In the commercial entitled “Listen. Think. Answer.” (the “Commercial”), Defendants used footage from *Moonwalk* showing Potter traversing a highline tied to Cathedral Peak in Yosemite National Park as the full moon rises in the background to advertise the LG OLED TV with AI (artificial intelligence). Plaintiff is informed and believes that the Commercial was broadcast

³ See *White v. Samsung Elecs. Am., Inc.*, 971 F.2d 1395 (9th Cir. 1992) (Vanna White); *Wendt v. Host Intern., Inc.*, 197 F.3d 1284 (9th Cir. 1999) (George Wendt and John Ratzinger); *Waits v. Frito-Lay, Inc.*, 978 F.2d 1093 (9th Cir. 1992) (Tom Waits).

⁴ See <https://www.statista.com/statistics/267095/global-market-share-of-lcd-tv-manufacturers/>.

on television at least as recently as July 1, 2018, and was a national advertisement that played, among other places, in this judicial district.

23. The Commercial was also made available on LG's YouTube channel at <https://www.youtube.com/watch?v=QBxdSv46pZY>, and thereby was displayed, transmitted, broadcast, streamed, publicly performed, and/or reproduced in this judicial district to help sales of products that are sold in this judicial district. As shown in the screenshot below of the website of the national electronics retailer Best Buy,⁵ the product promoted by the Commercial, the LG OLED TV with AI, is on display and available for purchase in retail locations in this judicial district, including but not limited to the store at Avon, Indiana.

⁵ See <https://www.bestbuy.com/site/lg-65-class-oled-c9pua-series-2160p-smart-4k-uhd-tv-with-hdr/6338500.p?skuId=6338500>.

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Powerful performance. Endless entertainment. **TCL**

Best Buy > TV & Home Theater > TVs > All Flat-Screen TVs

MAGNOLIA

LG - 65" Class - OLED - C9PUA Series - 2160p - Smart - 4K UHD TV with HDR
Model: OLED65C9PUA SKU: 6338500

★★★★☆ 4.6 (15 Customers) | 1 Expert Review | 1 Answered Question

Price Match Guarantee
\$3,199.99 **or \$133**
Save **\$300** suggested 24-Month F
Was \$3,499.99 Show me h

Protect your product
★★★★☆ (474)

2 Years \$399.99	5 Years \$729.99	No plan selecte
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Learn about Standard Protection Pla

Professional Services
Showing options for 92697

- TV Connect and Setup
As soon as **Thu, May 23**.
What's Included?
- Premium TV Mounting (TV Conn Setup Included)
As soon as **Thu, May 23**.
What's Included?

Specialty Item
FREE delivery as soon as **Thu, May 2**
Need it installed? Delivery + Installat
Fri, May 24 in 92697.

Want it today? Pick it up at Avon.
Act Fast - Only 1 left at your store!

24. The LG OLED TV with AI, is also available for purchase in stores in this judicial district in West Carmel, Greenwood, Noblesville, and Lafayette, Indiana.

Availability near Avon, IN (46123) [Update Location](#)

LG - 65" Class - OLED - C9PUA Series - 2160p - Smart - 4K UHD TV with HDR



Your Store

- 1 Avon**
10 Miles Away
Available Today - Ready in 1 hour
Only 1 left!
- 2 West Carmel**
20 Miles Away
Available Today - Ready in 1 hour
Only 1 left!
- 3 Greenwood**
24 Miles Away
Available Today - Ready in 1 hour
Only 2 left!
- 4 Noblesville**
34 Miles Away
Available Today - Ready in 1 hour
Only 1 left!
- 5 Lafayette**
47 Miles Away
Available Today - Ready in 1 hour
Only 1 left!
- 6 Brickyard**

25. Below is a screenshot of the infringing Commercial.



Listen. Think. Answer.

26. As any observer can immediately notice, the footage used in the infringing Commercial is *identical* to distinctive and unique footage from *Moonwalk*.

27. As a multi-billion dollar corporation with a long track record of vigorously protecting and enforcing its intellectual property rights to the maximum extent allowed by the law, Defendants are fully aware of the need to obtain licenses for the use any individual's right of publicity, including his or her likeness, for commercial purposes.

28. Plaintiff was never approached by Defendants regarding licensing of Mr. Potter's likeness to Defendants for use in the Commercial.

29. Indeed, Plaintiff never authorized Defendants to use Mr. Potter's likeness in any manner, let alone for the sale of televisions that execute voice-activated commands.

30. Defendant's advertisement of a product that enables a sedentary lifestyle, wherein material demands can be met without moving from the couch in the confines of one's living room, is antithetical to what Mr. Potter stood for in life: an appreciation of the splendor of the outdoors and a celebration of the freedom to forge one's own path in uncharted terrain. Indeed, Mr. Potter spoke often and eloquently about his search for spirituality, and expressly rejected the corporate, commercial, and competitive worlds that sought to profit from his art without understanding it:

- “What I do is a spiritual practice and art, and though I've been competitive in the past, my competitive drive has always bothered me. I've learned that my highest powers never come from being competitive.”⁶
- “I've never sought out sponsorship. When I eventually started doing some climbs that were cutting edge, people noticed me and sponsorship offers came, and though that wasn't my focus, it allowed

⁶ See <https://rockandice.com/people/dean-potter-what-ive-learned/> (first published in *Rock and Ice* issue 219 (July 2014); republished May 16, 2016).

me to climb full-time and I took the opportunity and said yes to being a paid climber. But still, to this day, I don't seek out sponsorship. My focus is still to just practice my art, perfect my art, and do my art at the highest level and let the rest of life work itself out.”⁷

- On his loss of sponsorships due to the high risk of his performances:
“‘They definitely came down on me the hardest,’ Potter said, noting that the sports he focuses on motivated the decision at Clif Bar, which according to the company’s statement, had been a point of concern for a year before the decision. Potter had been sponsored by the energy bar maker for the past decade. His sponsorships are typically multiyear contracts that include a salary, products, and travel support. Over the years Potter has had conflicts with other sponsors, too. He was dropped by brands Patagonia and Black Diamond in 2006 for his controversial climb of Arches National Park’s iconic Delicate Arch. But despite a wild reputation and footage of him in death-defying situations, Potter disagreed with Clif Bar’s portrayal of him. He is less-often recognized for his sense of spirituality in the outdoors.”⁸

⁷ *Id.*

⁸ <http://www.alamedamagazine.com/When-a-Dangerous-Sport-Became-Too-Dangerous-for-Clif-Bar/> (published May 1, 2015).

- “These mountain arts bring me peace, and I play in the void and come closer to understanding interdependence. Death Consequence reduces lesser motivations to the necessity, breath.”⁹

31. Thus, when Mr. Potter lived his life sacrificing even the sponsors that made his vocation possible, and died searching for the freedom from the “lesser motivations” that led him away from his highest powers and inner peace, it is unspeakably galling that Defendants took advantage of Mr. Potter’s death to steal his art and sell the ultimate of lesser motivations: artificially intelligent and voice-activated electronic servants pandering in simulations of pleasure.

32. On December 20, 2018, Plaintiff sent a written cease and desist letter to Defendant LG Electronics USA, Inc. This correspondence requested that Defendants cease and desist any and all use of Mr. Potter’s likeness in the Commercial or in association with Defendant’s business.

33. On January 10, 2019, and April 11, 2019, Defendant LG Electronics USA, Inc. responded that it had obtained a license to the use the footage from *Moonwalk* from its director, Mikey Schaefer, and on that basis denied liability.

34. Plaintiff’s counsel corresponded extensively with Defendant’s counsel by email and telephone between January and April 2019. In these discussions, Defendants made clear that though they claimed to have had a license, they never

⁹ <http://www.discovery.com/tv-shows/elevation-weekend/bios/dean-potter/>.

asked for nor obtained chain-of-title and clearances from the putative rightsholder, Mr. Schaefer, thereby failing to do the basic due diligence required for the use of footage of any individual in a commercial advertisement—a willful failure to abide by the law or, at a minimum, a reckless disregard for the law.

35. To make matters worse, once Defendants finally did research the issue of clearances (only after repeated prodding from Plaintiff's counsel), they attempted to obfuscate, relying solely on an unauthenticated studio portraiture release, supposedly signed by Mr. Potter to Mr. Schaefer, without any consideration and without any application to the situation at hand. Though Defendants claimed this release pertained to the *Moonwalk* footage, it actually provides a release (if any at all) to only photographs alone (and portraiture, at that), not video footage. Specifically, the purported release lacks any mention of the medium of *video or film*, let alone the specific film *Moonwalk*. Indeed, the alleged release produced by Defendants is a release used by photographers doing studio portraits/headshots. In addition, the putative release does not even identify any specific work or works to which it pertains. Thus, even if actually executed properly by Mr. Potter, the release appears to have pertained to photographic stills (and, a portraiture photography session that Mr. Schaefer may have had with Mr. Potter at that (hence the exclusive reference to portraiture photograph)) and not any

videography, such as the *Moonwalk* video. In short, as is facially evident, the putative release plainly does not control or apply here.

36. Furthermore, the purported release does not authorize licenses or sublicenses. Thus, even if Mr. Schaefer had the right directly to exploit Mr. Potter's image and trademark rights, neither he nor Defendants could have relied on the language in the release to extend that right to third parties such as LG Electronics USA, Inc.

37. All told therefore, Defendants' disingenuous reliance on this putative release was not only without basis, it only highlighted the willfulness of Defendants' unlawful conduct.

38. Defendants wholly failed to address any of Plaintiff's objections to the shortcomings of their purported (and newfangled) reliance on a plainly invalid and inapplicable "release."

39. After months of silence, Defendants then turned over the matter to their advertising company, Krema, who claimed that all proper rights were secured through a purported license that Krema executed with Mr. Schaefer and Krema produced said license to claim that it absolved them of wrongdoing.

40. Significantly, however, the purported license from Mr. Schaefer granted Defendants a license to *Mr. Schaefer's rights only*, namely in alleged copyright; the license could not have included any rights belonging to Mr. Potter,

including his right of publicity and common law trademark rights, since Mr. Schaefer could not convey any rights beyond what he purportedly owned.

41. Because Mr. Potter never consented to Mr. Schaefer's trading in the invaluable equity of Mr. Potter's likeness in *Moonwalk*, and/or his reputation as a highlining pioneer, to sell television sets, Mr. Schaefer could not license to Defendants Mr. Potter's rights, including, *inter alia*, Potter's publicity and common law trademark rights

42. Nor does Defendants' choice to pay Mr. Schaefer mitigate their wrongful conduct vis-à-vis Mr. Potter. If anything, Defendants' efforts to seek permission for some rights at the explicit disregard for others establishes that their theft was willful, as Defendants clearly had knowledge of the valuable property rights in *Moonwalk* and deliberately took steps to capitalize on it, while tactically excluding Mr. Potter from its (objectionable) commercial exploitation.

43. Defendants do not have, nor have ever had, permission, consent, or authorization from Plaintiff to use any aspect of Mr. Potter's name, image, likeness, or trademarks for any purpose, including a commercial purpose.

44. Defendants have been put on notice of Plaintiff's rights associated with Mr. Potter's name, image, likeness, and trademarks and Plaintiff's objection to Defendants' unauthorized use of the same.

45. Plaintiff is informed and believes that Defendants have successfully sold the LG OLED TV with AI by promoting it through the Commercial, thereby profiting from the exploitation of Mr. Potter's likeness and appearance without Plaintiff's authorization or consent, and certainly with no payments made by Defendants to Plaintiff.

FIRST CLAIM FOR RELIEF

(Infringement of Right of Publicity, Indiana Code §§ 32-36, *et seq.*)

46. Plaintiff incorporates here by reference the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

47. Dean Potter is a "personality" as defined by Indiana Code § 32-36-1-6 because, during his lifetime and thereafter, the name, image, likeness, distinctive appearance, gesture, and mannerisms of the late Dean Potter had and maintains commercial value.

48. During his lifetime and thereafter, Dean Potter and his Estate commercially exploited his unique identity and persona only after carefully considering the impact on his reputation and public image.

49. Defendants have used and continue to use, without consent, Dean Potter's likeness and distinctive performance in *Moonwalk* in connection with the distribution, advertising, promotion, and sale of LG products, including the LG OLED TV with AI.

50. Defendants' use of Dean Potter's likeness and distinctive performance in *Moonwalk* is for a commercial purpose.

51. Defendants have knowingly published, broadcast, or distributed the Commercial in Indiana in violation of Dean Potter's right of publicity.

52. Plaintiff has been injured as a result of Defendants' conduct in an amount to be determined at trial, but which amount includes at a minimum the profits Defendants have reaped from the sales of LG products promoted by the Commercial, including the LG OLED TV with AI.

53. Defendants' conduct has been and continues to be intentional, willful, and with full knowledge of the violation of Plaintiff's rights.

54. Defendants are causing and, unless enjoined by the Court, will continue to cause Plaintiff irreparable harm for which he has no adequate remedy at law.

SECOND CLAIM FOR RELIEF

(False Association and False Endorsement, 15 U.S.C. § 1125(a))

55. Plaintiff incorporates here by reference the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

56. Defendants' incorporation or use of Dean Potter's identity, appearance, likeness, or distinctive and distinguishing characteristics (including but not limited to his daring and cinematic aerial and acrobat performances in the

wilds of nature) tend to cause likely confusion, mistake, and deception as to the endorsement, affiliation, association, sponsorship, or approval of the LG products promoted by the Commercial, including the LG OLED TV with AI.

57. Defendants have not been authorized by Plaintiff to incorporate or use Dean Potter's identity, appearance, likeness, or distinctive and distinguishing characteristics in the Commercial, and Defendants are not endorsed, affiliated or associated with, sponsored by, or approved by Plaintiff.

58. Defendants' wrongful acts tend to cause likely confusion, mistake, and deception as to the connection of Defendants with Plaintiff.

59. Defendants knew or should have known that their unauthorized use of Dean Potter's identity, appearance, likeness, or distinctive and distinguishing characteristics by incorporating Dean Potter's distinctive performance was likely to cause confusion or mistake regarding whether Plaintiff has endorsed, is affiliated or associated with, sponsors, is connected to, or has approved of the Commercial and/or the LG products promoted by the Commercial, including the LG OLED TV with AI.

60. Defendants' use of Plaintiff's distinctive appearance and identity is in commerce.

61. As a direct and proximate result of Defendants' actions, as alleged herein, Plaintiff has been damaged, and continues to be damaged, in an amount presently unknown, but to be proven at the time of trial.

62. Defendants' conduct has been and continues to be intentional, willful, and with full knowledge of the violation of Plaintiff's rights, and was done with the intent to trade upon the goodwill and reputation of Dean Potter and/or his Estate.

63. Defendants are causing and, unless enjoined by the Court, will continue to cause Plaintiff irreparable harm for which he has no adequate remedy at law.

64. Plaintiff is further entitled to her attorneys' fees and full costs pursuant to 15. U.S.C. § 1117, and prejudgment interest according to law.

THIRD CLAIM FOR RELIEF

(Common Law Unfair Competition)

65. Plaintiff incorporates here by reference the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

66. Defendants have knowingly, intentionally, and maliciously used and incorporated Dean Potter's likeness and distinctive performance in *Moonwalk* in connection with the distribution, advertising, promotion, and sale of LG products, including the LG OLED TV with AI, in direct violation of the common law of the State of Indiana.

67. Defendants' actions constitute misappropriation of Dean Potter's likeness and distinctive performance in *Moonwalk* as owned and enforced by Plaintiff.

68. Defendants' action further constitute a violation of the intellectual property rights owned and enforced by Plaintiff.

69. Defendants' actions with regard to their unauthorized use of Dean Potter's likeness and distinctive performance in *Moonwalk* in connection with the distribution, advertising, promotion, and sale of LG products, including the LG OLED TV with AI, were taken by Defendants knowingly, willfully, and intentionally and with full knowledge or reckless disregard of the proprietary nature of the rights owned, licensed, and protected by Plaintiff.

70. Plaintiff's and/or Dean Potter's business, goodwill, and reputation have been and will continue to be irreparably harmed by Defendants unless Defendants are enjoined from their unauthorized and infringing activities.

FOURTH CLAIM FOR RELIEF

(Unjust Enrichment)

71. Plaintiff incorporates here by reference the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

72. At the expense of and detriment to Plaintiff, and without Plaintiff's prior express or implied authorization, Defendants have profited from their

knowing, intentional, willful, and malicious action of using Dean Potter's likeness and distinctive performance in *Moonwalk* in connection with the distribution, advertising, promotion, and sale of LG products, including the LG OLED TV with AI.

73. Defendants' profits are based in whole in or party on the authorized use of Dean Potter's likeness and distinctive performance in *Moonwalk* in violation of Indiana's Right of Publicity Statute.

74. As a result, Defendants have been and continue to be unjustly enriched through their unauthorized use of Dean Potter's likeness and distinctive performance in *Moonwalk*.

75. Defendants' enrichment has been to the detriment of Plaintiff's and/or Dean Potter's business, goodwill, and reputation.

FIFTH CLAIM FOR RELIEF

(Conversion)

76. Plaintiff incorporates here by reference the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

77. Defendants, by engaging in the conduct described above, has exerted unauthorized control over the property of another in violation of Indiana Code § 35-43-4-3; to wit, the proprietary rights in Dean Potter's likeness and distinctive performance in *Moonwalk* owned by Plaintiff.

78. Defendants' deception has proximately caused Plaintiff to suffer damages in a sum as yet to be ascertained but which damages continue to accrue or accumulate.

79. Accordingly, under Indiana law, Plaintiff is entitled to an award of those actual damages as well as statutory treble damages, corrective advertising damages, costs, and reasonable attorneys' fees.

80. Defendants have irreparably harmed Plaintiff by converting Plaintiff's property.

SIXTH CLAIM FOR RELIEF

(Deception)

81. Plaintiff incorporates here by reference the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

82. By engaging in the conduct as herein described and complained of, Defendants have disseminated to the public advertisements that Defendants know are false, misleading, or deceptive, with intent to promote the purchase or sale of LG products, including the LG OLED TV with AI.

83. On the basis of Defendants' unlawful and illegal actions as herein complained of, Defendants have committed deception as defined under Indiana Code § 35-43-5-3(a)(9).

84. Defendants' deception has proximately caused Plaintiff to suffer damages in a sum as yet to be ascertained but which damages continue to accrue or accumulate.

85. Accordingly, under Indiana law, Plaintiff is entitled to an award of those actual damages as well as statutory treble damages, corrective advertising damages, costs, and reasonable attorneys' fees.

86. Plaintiff will continue to be irreparably harmed by Defendants unless Defendants are enjoined from their unlawful business practices; to wit, the unauthorized and infringing use of Dean Potter's likeness and distinctive performance in *Moonwalk* in connection with the distribution, advertising, promotion, and sale of LG products, including the LG OLED TV with AI, which constitutes deception under Indiana law.

87. Plaintiff's remedy at law is inadequate to prevent further violation of its rights.

SEVENTH CLAIM FOR RELIEF

(Violation of Indiana Crime Victims' Act)

88. Plaintiff incorporates here by reference the allegations in the preceding paragraphs of this Complaint as though fully set forth herein.

89. Under the Indiana Crime Victims' Act, Ind. Code § 34-24-3-1, a person that suffers pecuniary loss as a result of a violation of Indiana Code § 35-43

et seq. may bring a civil action against the person who cause the loss for treble damages, costs of the action, and reasonable attorneys' fees.

90. Defendants have violated Indiana Code § 35-43 through their knowing, intentional, willful, and malicious commission of the following offenses: (1) conversion, as defined in Indiana Code § 35-43-4-3, and (2) deception, as defined in Indiana Code § 35-43-5-3.

91. Plaintiff is a victim of Defendants' knowing, intentional, willful, and malicious criminal violations of Indiana's laws against conversion and deception; and as a result, Plaintiff has suffered actual pecuniary damages.

92. Pursuant to Indiana Code § 34-24-3-1, Plaintiff is entitled to the following: treble damages, costs of the action, reasonable attorneys' fees, actual travel expenses, reasonable amount for loss of time, actual direct and indirect expenses for loss of time, and all other reasonable costs of collection as a result of Defendants' unauthorized, malicious, and intentional use of Dean Potter's likeness and distinctive performance in *Moonwalk* in connection with the distribution, advertising, promotion, and sale of LG products, including the LG OLED TV with AI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court grant the following relief and judgment:

A. An award of all damages owed to Plaintiff as prescribed by all applicable statutory rights of publicity, including but not limited to the Indiana Right of Publicity Statute, the Lanham Act, Indiana statute, and common law;

B. An award of damages, including but not limited to treble damages, costs, disgorgement of profit, and attorneys' fees as set forth in the applicable statutes in an amount to be determined at trial.

C. A permanent injunction enjoining and restraining Defendants from conducting further distribution, advertising, promotion, and sale of goods and services which bear or are related to any aspect of Dean Potter's likeness and distinctive performance in *Moonwalk*.

D. An order that Defendants bear the cost of any rehabilitative advertising necessary to correct the damages done to Plaintiff's and/or Dean Potter's business, goodwill, and reputation;

E. For treble and/or punitive damages;

F. For attorney's fees and costs of suit incurred herein; and

G. Such other and further relief as this court may deem just and proper.

Dated: October 1, 2019

ONE LLP

By: /s/ John Tehranian

John Tehranian

Jenny S. Kim (*admission pending*)

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Dean Potter LLC

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury as to all claims and all issues properly triable thereby.

Dated: October 1, 2019

ONE LLP

By: /s/ John Tehranian

John Tehranian

Jenny S. Kim (*admission pending*)

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