

ORIGINAL

2009 JAN -5 PM 4:04

CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES  
BY \_\_\_\_\_  
MC

FILED

1 PAUL J. CAMBRIA, JR., ESQ. (State Bar No. 177957)  
2 JONATHAN W. BROWN, ESQ. (State Bar No. 223901)  
3 LIPSITZ GREEN SCIME CAMBRIA LLP  
4 42 Delaware Avenue, Suite 120  
5 Buffalo, New York 14202-3924  
6 (716) 849-1333  
7 Facsimile No.: (716) 849-1315  
8 [pcambria@lglaw.com](mailto:pcambria@lglaw.com)  
9 [jbrown@lglaw.com](mailto:jbrown@lglaw.com)

6 MARK S. HOFFMAN, ESQ. (State Bar No. 108400)  
7 RICHARD W. LABOWE, ESQ. (State Bar No. 105905)  
8 LABOWE, LABOWE & HOFFMAN, LLP  
9 1631 West Beverly Boulevard, Second Floor  
10 Los Angeles, California 90026-5746  
11 (213) 250-9800  
12 Facsimile No: (213) 975-1145  
13 [mshllh@aol.com](mailto:mshllh@aol.com)  
14 [llhlaw1631@aol.com](mailto:llhlaw1631@aol.com)

Attorneys for Plaintiff Larry C. Flynt

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA

15 LARRY C. FLYNT,

16 Plaintiff,

17 vs.

18  
19 FLYNT MEDIA CORPORATION,  
20 a Delaware Corporation; JIMMY  
21 FLYNT, II; DUSTIN FLYNT; and  
22 DOES 1 through 10 inclusive,

23 Defendants.  
24  
25  
26  
27  
28

Case No. CV09-00048

COMPLAINT FOR:

1. FEDERAL INFRINGEMENT OF UNREGISTERED TRADEMARK
  2. FEDERAL TRADEMARK DILUTION
  3. FEDERAL STATUTORY UNFAIR COMPETITION
  4. CALIFORNIA COMMON LAW UNFAIR COMPETITION
  5. CALIFORNIA STATUTORY RIGHT OF PUBLICITY
  6. CALIFORNIA COMMON LAW FOR WRONGFUL APPROPRIATION OF NAME
- DEMAND FOR JURY TRIAL

I/S  
20

(T)

1 Plaintiff Larry C. Flynt, by and through his attorneys, herein alleges:

2 **NATURE OF THE ACTION**

3  
4 1. This is an action for preliminary and permanent injunctive relief and  
5 damages arising from Defendants' infringement of the federal and California state  
6 statutory and common law rights of Plaintiff Larry C. Flynt and his famous  
7 FLYNT name and common law trademark in the adult entertainment industry,  
8 specifically including adult-themed motion pictures distributed via DVD and  
9 possibly other forms of media. The individual Defendants, Jimmy Flynt, II and his  
10 brother Dustin Flynt, are nephews of Plaintiff Larry C. Flynt; together with their  
11 company, Defendant Flynt Media Corporation, they seek to distribute their own  
12 adult motion pictures under the "Flynt" mark, intentionally and willfully trading  
13 off on the famous FLYNT name and mark of their uncle, Plaintiff Larry C. Flynt.  
14  
15  
16  
17

18 **JURISDICTION AND VENUE**

19  
20 2. This is a civil action seeking injunctive relief and damages for federal  
21 trademark infringement, federal trademark dilution, and federal statutory unfair  
22 competition under the Lanham Act, 15 U.S.C. § 1051, *et seq.* (the "Lanham Act"),  
23 and California state common law unfair competition and statutory right of  
24 publicity.  
25  
26  
27  
28



1           7. Upon information and belief, Defendant Flynt Media Corporation is a  
2 Delaware corporation authorized to do business in the State of California, with  
3 places of business located at 468 North Camden Drive, Beverly Hills, California  
4 90210, and at 9144 Deering Avenue, Chatsworth, California 91311.  
5

6           8. Upon information and belief, Defendant Jimmy Flynt, II is an  
7 individual and principal of Flynt Media Corporation, with an office and place of  
8 business located at 468 North Camden Drive, Beverly Hills, California 90210, and  
9 at 9144 Deering Avenue, Chatsworth, California 91311.  
10

11           9. Upon information and belief, Defendant Dustin Flynt is an individual  
12 and principal of Flynt Media Corporation, with an office and place of business  
13 located at 468 North Camden Drive, Beverly Hills, California 90210 and at 9144  
14 Deering Avenue, Chatsworth, California 91311.  
15

16           10. The true names and capacities, whether individual, corporate, affiliate,  
17 or otherwise, of Defendants Does 1-10, inclusive, are presently unknown to  
18 Plaintiff, and for that reason, those Defendants are sued by such fictitious names.  
19 Plaintiff Larry C. Flynt is informed and believes and thereon alleges that each of  
20 the Doe Defendants is in some way responsible for the damages herein alleged.  
21 Plaintiff will amend this Complaint when the true names and capacities of the Doe  
22 Defendants become known to him.  
23  
24  
25  
26  
27  
28

1           11. Upon information and belief, each of the Defendants, including the  
2 fictitiously named Doe Defendants, was and is the agent and representative of the  
3  
4 other Defendants, acting within the purpose and scope of said agency and  
5 representation. Plaintiff is further informed and believes that each of the  
6  
7 Defendants, including the fictitiously named Doe Defendants, authorized and  
8 ratified the conduct therein alleged of each of the other Defendants.

9  
10                           **FACTS COMMON TO ALL CAUSES OF ACTION**

11           12. Since the early 1970's, through his various "LFP" (originally Larry  
12 Flynt Publishing) companies, Plaintiff Larry C. Flynt has used the FLYNT name  
13  
14 and common law mark in connection with his registered trademark HUSTLER for  
15 sexually explicit adult magazines and other similar publications, has produced and  
16 distributed numerous sexually explicit motion pictures in video cassette and DVD  
17  
18 format under his various affiliated companies, and he and his companies have  
19 owned and operated various Internet Websites, adult-content stores, and related  
20  
21 adult entertainment vehicles.

22           13. Plaintiff has even obtained trademark registrations from the United  
23 States Patent and Trademark Office [the "PTO"] for his famous name "Larry  
24 Flynt" for his non-adult businesses, including PTO registration no. 3285198 for  
25 "Larry Flynt's Bar & Grill" registered August 28, 2007 to LFP, IP, LLC; "Larry  
26 Flynt's Grand Slam of Poker" no. 3006902 registered October 18, 2005 to LFP  
27  
28

1 Casino IP, LLC; and “Larry Flynt’s Poker Challenge Cup” no. 2909711 registered  
2 December 14, 2004 to LFP Casino IP, LLC.  
3

4 14. Plaintiff Larry C. Flynt and his Flynt surname have become personally  
5 famous throughout the United States and much of the world under the FLYNT  
6 name and mark.  
7

8 15. In addition, Plaintiff was the principal subject of a well-known 1996  
9 Columbia Pictures feature motion picture entitled “The People vs. Larry Flynt,”  
10 by internationally acclaimed director Milos Forman, depicting Plaintiff as  
11 heroically championing the rights of free expression under the First Amendment to  
12 the United States Constitution.  
13  
14

15 16. In sum, Plaintiff Larry C. Flynt has become internationally known and  
16 symbolic of adult, sexually explicit entertainment magazines, motion pictures,  
17 Internet Websites, and the like.  
18

19 17. Plaintiff’s FLYNT name and mark has become famous, has acquired  
20 secondary meaning to the public, and he is entitled to protect the Intellectual  
21 Property rights associated with the name and mark FLYNT.  
22

23 18. The individual Defendants, Jimmy Flynt, II, and Dustin Flynt, are  
24 nephews of Plaintiff, who formerly worked for Plaintiff’s companies, but whose  
25 association with said companies has been terminated.  
26  
27  
28

1           19. Upon information and belief, Defendants Jimmy Flynt, II, and Dustin  
2 Flynt have now formed their company, Flynt Media Corporation and other Doe  
3 Defendants, to enter the adult entertainment business on their own, seeking to trade  
4 off and usurp the famous FLYNT name and mark of their uncle, Plaintiff Larry C.  
5 Flynt.  
6  
7

8           20. Upon information and belief, Jimmy Flynt, II and Dustin Flynt,  
9 together with Flynt Media Corporation and the Doe Defendants, are now seeking  
10 to distribute various sexually explicit adult entertainment films using the “FLYNT”  
11 name and mark associated with Plaintiff to confuse the public into buying their  
12 inferior products, believing them to be genuine products of Plaintiff Larry C. Flynt  
13 or genuine products endorsed by Plaintiff Larry C. Flynt.  
14  
15

16           21. Upon information and belief, Defendants, through their Internet  
17 Website, <http://flyntdistribution.com/distribution.php> , have advertised and  
18 announced the following “FLYNT” adult-themed motion picture titles and release  
19 dates: “Xtreme Jugs”, 1/12/09; “Waiting for Mr. Dick”, 1/19/09; “Sex At Your  
20 Service”, 1/26/09; “Lucky”, 2/2/09; “Positive Exposure”, 2/2/09; “The Anal Files”,  
21 2/16/09; and “An Irresistible Urge To Share A Dick”, 2/23/09. A true copy of said  
22 Website page dated as of January 2, 2009 is attached hereto and incorporated  
23 herein as “**Exhibit A**”; the “FLYNT” name on the covers of all seven titles is very  
24 prominently displayed in all capital letters in a large font.  
25  
26  
27  
28

1           22. Upon information and belief, Defendants also operate the Website,  
2 flyntcorp.com, that also prominently displays the FLYNT mark and name, and also  
3 directs consumers to the flyntdistribution.com website. A true copy of the first  
4 page of said Website is attached hereto and incorporated herein as "**Exhibit B.**"  
5

6           23. Upon information and belief, Defendants have started to distribute  
7 DVD (digital versatile disks) that prominently display the name and mark FLYNT  
8 in bold capital letters on the box cover. A true copy of the box cover for the  
9 motion picture entitled "Extreme Jugs" scheduled for release January 12, 2009" is  
10 depicted on "**Exhibit A**" supra, and incorporated herein by reference.  
11

12           24. Defendants have announced that they intend to advertise their new  
13 "FLYNT" adult video line at the AVN Adult Entertainment Expo 2009 in Las  
14 Vegas, which is scheduled to open on or about January 8, 2009.  
15

16           25. Defendants are already advertising their "FLYNT" infringing mark on  
17 the Internet and elsewhere, causing confusion among the general consuming public  
18 as to the origin of Defendants' motion pictures, since consumers associate the  
19 FLYNT name with Plaintiff Larry C. Flynt.  
20

21           26. By letter dated December 23, 2008, counsel for Plaintiff sent a "cease  
22 and desist" letter to Defendants, demanding that they stop all further exploitation  
23 of the FLYNT name and mark with regard to their proposed distribution of adult  
24 motion pictures, but said letter has been rejected by Defendants, who have  
25  
26  
27  
28

1 indicated that they will continue their attempt to exploit the FLYNT name of their  
2 famous uncle, the Plaintiff. A true copy of said letter is attached hereto and  
3  
4 incorporated herein as “**Exhibit C.**”

5 27. Upon information and belief, the foregoing conduct by Defendants  
6  
7 Flynt Media Corporation, Jimmy Flynt, II and Dustin Flynt, and each of them, has  
8 been willful and deliberate, specifically intended by said Defendants to trade off on  
9 the goodwill, fame and secondary meaning associated with the Plaintiff’s famous  
10 FLYNT name and mark, and to “palm off” their adult motion pictures as being  
11 those of Plaintiff, while Defendants Jimmy Flynt, II and Dustin Flynt have not  
12 achieved any fame or secondary meaning for their own names.  
13  
14

15 28. Unless Defendants are preliminarily and permanently enjoined by this  
16 Court, Plaintiff will suffer irreparable injury and lost goodwill associated with the  
17 FLYNT name and mark by the Defendants’ willful and deliberately infringing  
18 conduct as aforesaid.  
19  
20

21 **COUNT I**

22 **INFRINGEMENT OF UNREGISTERED TRADEMARK**

23 (15 U.S.C. § 1125(a))

24  
25 29. Plaintiff incorporates by reference the allegations of Paragraphs 1  
26 through 28 as if fully set forth herein. Plaintiff’s FLYNT common law trademark is  
27 widely recognized by the general consuming public of the United States as  
28

1 designating the source of various goods and services originating with Plaintiff  
2 Larry C. Flynt and his affiliated companies.

3  
4 30. Plaintiff's FLYNT common law trademark has become famous and has  
5 acquired secondary meaning to the consuming public.

6  
7 31. By intentionally using the "FLYNT" common law trademark in  
8 commerce on the adult-themed motion pictures which they are currently  
9 advertising on their Website without Plaintiff's permission, and which upon  
10 information and belief they intend to distribute as aforesaid, Defendants are  
11 deliberately, intentionally and willfully infringing upon Plaintiff's common law  
12 trademark, and the goodwill associated by the public with the FLYNT name and  
13 mark.  
14  
15

16  
17 32. Upon information and belief, if not preliminarily and permanently  
18 enjoined by this Court, Defendants will continue to advertise and display, and will  
19 sell, distribute and otherwise exploit Plaintiff's FLYNT common law trademark for  
20 their own commercial use in violation of Plaintiff's rights under the Lanham Act,  
21 15 U.S.C. § 1125(a).  
22

23  
24 33. Plaintiff also seeks monetary damages and attorneys' fees for  
25 Defendants' use and advertising of Plaintiff's FLYNT common law trademark and  
26 name on their <flyntdistribution.com> and <flyntcorp.com> Internet Website  
27 which Defendants own and/or operate.  
28





1           44. The FLYNT common law trademark owned by Plaintiff Larry C. Flynt  
2 is widely recognized by the general consuming public of the United States as a  
3 designation of the source of goods sold utilizing said mark by Plaintiff.  
4

5           45. Plaintiff Larry C. Flynt has become famous throughout the United  
6 States and much of the world by reason of his advocacy of free expression, his  
7 well-known publication of *Hustler Magazine*, and the production and distribution  
8 of adult-themed motion pictures and other adult entertainment vehicles.  
9

10           46. Defendants have advertised, and are threatening to utilize the  
11 “FLYNT” mark without Plaintiff’s permission, with the intent to create an  
12 association and affiliation with Plaintiff Larry C. Flynt, and to trade-off on his  
13 fame by usurping the goodwill of his FLYNT name and mark.  
14

15           47. The continued use by Defendants of the “FLYNT” mark will continue  
16 to result in deception and confusion of the public as to the source of their motion  
17 pictures and possibly other goods as genuine FLYNT products, and constitutes  
18 unfair competition and violation of the federal Lanham Act, 15 U.S.C. § 1125(a),  
19 and violation of the Plaintiff’s exclusive rights to exploit said famous mark.  
20

21           48. Upon information and belief, unless preliminarily and permanently  
22 enjoined by this Court, Defendants will continue to unlawfully advertise and  
23 exploit the Plaintiff’s famous FLYNT name and mark, causing him irreparable  
24 damage and injury to his name and goodwill.  
25  
26  
27  
28

1 49. Plaintiff has no adequate remedy at law

2 **COUNT IV**

3 **COMMON LAW TRADEMARK INFRINGEMENT**

4 (California Common Law)

5  
6 50. Plaintiff incorporates by reference the allegations of paragraphs 1  
7 through 49 of this Complaint as if fully set forth herein.

8  
9 51. This cause of action under California state common law is separate and  
10 independent of the federally-based causes of action previously set forth herein, but  
11 it is between the same parties and is based on the same operative facts as set forth  
12 in the prior causes of action; this Court accordingly has supplemental jurisdiction  
13 over said claim.

14  
15 52. As set forth above, Plaintiff Larry C. Flynt resides and does business in  
16 the State of California, where he owns and enjoys common law trademark rights  
17 throughout the United States in the FLYNT name and mark for adult  
18 entertainment, including magazines, DVD's, the Internet, and other adult  
19 entertainment vehicles.

20  
21 53. The use of the FLYNT name and mark by Defendants in connection  
22 with the advertising, sale and distribution of their adult-themed motion pictures  
23 products under their <flyntdistribution.com> Internet Website and possibly other  
24 venues without Plaintiff's permission, in the State of California and elsewhere in  
25  
26  
27  
28

1 the United States, is likely to cause and has caused confusion among consumers as  
2 to the source of Defendants' products, and purchasers thereof will likely associate  
3 such products as originating with Plaintiff Larry C. Flynt, all to the detriment of  
4 said Plaintiff.  
5

6  
7 54. Upon information and belief, unless preliminarily and permanently  
8 enjoined by this Court, Defendants will continue their aforesaid willful and  
9 deliberate infringement of Plaintiff's FLYNT name and mark.  
10

11 55. Plaintiffs have no adequate remedy of law.  
12

13 **COUNT V**

14 **VIOLATION OF PLAINTIFF'S RIGHT OF PUBLICITY**

15 (California Civil Code § 3344)

16  
17 56. Plaintiff incorporates by reference the allegations of paragraph 1  
18 through 55 of this Complaint as if fully set forth herein.

19  
20 57. Defendants Flynt Media Corporation, Jimmy Flynt, II, and Dustin  
21 Flynt have knowingly, deliberately and willfully used Plaintiff's famous FLYNT  
22 name by advertising "FLYNT" on their adult motion pictures and on their Internet  
23 Website for the purposes of commercially selling and distributing their adult-  
24 themed motion pictures to the consuming public.  
25  
26  
27  
28

1 58. Defendants did not have Larry C. Flynt's consent to use the name and  
2 mark FLYNT in connection with the aforementioned commercial enterprise  
3 distributing adult-themed motion pictures.  
4

5 59. Defendants' use of the name and mark FLYNT was and is directly  
6 connected to Defendants' commercial purpose.  
7

8 60. Defendants actions have and will cause harm to Plaintiff.

9 61. By reason of the foregoing, Defendants are liable to Plaintiff Larry C.  
10 Flynt for his actual damages sustained, and any profits realized by Defendants, as  
11 well as punitive damages and Plaintiff's reasonable attorneys' fees and costs,  
12 pursuant to § 3344(a) of the California Civil Code.  
13  
14

15 **COUNT VI**

16 **WRONGFUL APPROPRIATION OF NAME**

17 (California Common Law)  
18

19 62. Plaintiff incorporates by reference the allegations of paragraph 1  
20 through 612 of this Complaint as if fully set forth herein.  
21

22 63. Defendants Flynt Media Corporation, Jimmy Flynt, II, and Dustin  
23 Flynt have appropriated Plaintiff's famous FLYNT name in connection with the  
24 advertising and selling of commercial products. Defendants did not have Larry C.  
25 Flynt's consent to use the name FLYNT in connection with the aforementioned  
26 commercial enterprise distributing adult-themed motion pictures.  
27  
28

1           64    By reason of the foregoing, Defendants are liable to Plaintiff Larry C.  
2 Flynt for his actual damages sustained, and any profits realized by Defendants, as  
3 well as punitive damages.  
4

5           WHEREFORE, Plaintiff Larry C. Flynt demands judgment against  
6 Defendants as follows:  
7

8           (1) Restraining and enjoining Defendants Flynt Media Corporation, Jimmy  
9 Flynt, II, and Dustin Flynt, permanently and preliminarily during the pendency of  
10 this action, together with Defendants' officers, agents, employees, successors and  
11 assigns, and all those in privity and/or acting in concert with them, from  
12 advertising or otherwise using Plaintiff's FLYNT name and mark, or any  
13 confusingly similar name or mark, or from selling or otherwise distributing adult-  
14 themed motion pictures or other goods bearing the Plaintiff's FLYNT name and  
15 mark, or any other confusingly similar name or mark, including Internet Websites  
16 owned, operated or controlled by Defendants, without Plaintiff's permission, or  
17 from passing off Defendants' goods or services as those of Plaintiff Larry C. Flynt;  
18  
19  
20  
21

22           (2) Awarding Plaintiff Larry C. Flynt his monetary damages, including his  
23 actual damages sustained as a result of the Defendants' infringement of Plaintiff's  
24 common law trademark and other unlawful conduct set forth herein, together with  
25 an accounting of Defendants' profits, as provided in 15 U.S.C. § 1117, California  
26  
27  
28

1 common law and California's right of publicity under Civil Code § 3344, all in  
2 amounts to be determined at trial;

3  
4 (3) Directing Defendants to surrender for destruction all goods, labels,  
5 advertising material and other items containing or including the FLYNT name and  
6 mark without authorization of Plaintiff Larry C. Flynt;

7  
8 (4) Awarding Plaintiff Larry C. Flynt punitive damages against Defendants  
9 for their willfull misconduct in an amount to be determined at trial;

10  
11 (5) Awarding Plaintiff Larry C. Flynt his costs and reasonable attorneys'  
12 fees and expert witness fees in this action; and

13  
14 (6) Granting Plaintiff Larry C. Flynt such other and further relief as the  
15 Court may deem just and equitable.

16  
17 Dated: January 5, 2009



18  
19 Mark S. Hoffman, Esq.  
20 LABOWE, LABOWE & HOFFMAN, LLP  
21 1631 West Beverly Boulevard  
22 Second Floor  
23 Los Angeles, California 90026-5746  
24 (213) 250-9800

25 Paul J. Cambria, Jr. Esq.  
26 Jonathan W. Brown, Esq.  
27 LIPSITZ GREEN SCIME CAMBRIA LLP  
28 42 Delaware Avenue, Suite 120  
Buffalo, New York 14202-3924  
(716) 849-1333

Attorneys for Plaintiff Larry C. Flynt

