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 8 **UNITED STATES DISTRICT COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA**

10 LUC BESSON, a French citizen,
 11 Plaintiff,

12 vs.

13
 14 BLACKPILLS INC., a Delaware
 corporation,
 15 Defendant.

Case No. 2:17-CV-4578

COMPLAINT FOR:

**1. FALSE AND MISLEADING
 ASSOCIATION UNDER § 43(a)
 OF THE LANHAM ACT**

**2. VIOLATION OF THE RIGHT OF
 PUBLICITY**

DEMAND FOR JURY TRIAL

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JURISDICTION AND VENUE

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2 1. The Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and
3 1338(a). This is a civil action arising under federal law, the Lanham Act of 1946 as
4 amended (codified at 15 U.S.C. §§ 1051, et seq.). The pendent state law claims are
5 so related to the federal claims that they form part of the same case or controversy
6 pursuant to Article III of the United States Constitution. The court therefore has
7 supplemental jurisdiction over those claims pursuant to 28 U.S.C. § 1367(a).

8 2. The Court also has original jurisdiction pursuant to 28 U.S.C. § 1332.
9 This is a civil action between a foreign citizen residing in California and a Delaware
10 corporation with its principal place of business in New York. The amount in
11 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

12 3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)
13 for several independent reasons, including that: Defendant “resides” in this judicial
14 district for venue purposes under 28 U.S.C. § 1391(c)(2); and a substantial part of
15 the events or omissions giving rise to the claims occurred in this district.

PARTIES

16
17 4. Plaintiff Luc Besson (“Besson”) is a French citizen residing in Los
18 Angeles County, California.

19 5. Defendant Blackpills Inc. (“Blackpills”) is a Delaware corporation
20 which, on information and belief, has a principal place of business in New York,
21 New York.

GENERAL ALLEGATIONS

22
23 6. Besson is a prolific writer, director, and producer of feature films and
24 televisions series. Besson is known worldwide for his work on dozens of hit movies
25 including *La Femme Nikita*, *The Fifth Element*, *The Professional*, *The Transporter*,
26 *Taken*, and *Lucy*. Besson’s latest film, *Valerian and the City of a Thousand Planets*,
27 is scheduled for release in July 2017.

28 7. Besson’s name is widely recognized by the general consuming public

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1 in the United States as a designation of source for the writing, directing, and
2 producing services he provides and the motion pictures he makes. The public’s
3 association of Besson with a film or television project provides immense value to
4 that project, and Besson carefully controls the use of his name in connection with
5 such projects to protect his reputation and the value of his name.

6 8. Through his holding company Front Line, Besson holds a stake in a
7 third party production company called Together Studio, which was created and is
8 operated by Renauld le Van Kim (“Kim”). In or about June 2016, Kim caused
9 Together Studio to enter into an agreement with Blackpills to produce content for a
10 new streaming service that Blackpills was developing. That agreement indicated (in
11 French) that Blackpills and Together Studio would be developing a series based on
12 an “original idea by Luc Besson.”

13 9. A further production agreement dated as of April 1, 2016 was entered
14 into between Blackpills and Covent Garden Productions LLC (“Covent”)—an entity
15 which, on information and belief, is associated with Together Studio. That
16 production agreement likewise referenced the production of a series called
17 *Playground* with the notation: “Original idea : Luc Besson.”

18 10. As alleged further below, at no time did Besson ever authorize
19 Blackpills, Together Studio, and/or Covent to produce content using any of his
20 ideas, nor did Besson ever authorize these entities to use his name in connection
21 with any content they produced. No written agreement whatsoever exists between
22 Besson, on the one hand, and Blackpills, Together Studio, and/or Covent, on the
23 other, granting rights in his work or permitting the use of his name in connection
24 with content produced and distributed by them.

25 11. Starting earlier this year and continuously since, major industry
26 publications (*e.g.*, *Variety* and *The Hollywood Reporter*) as well as smaller outlets
27 have been reporting on Blackpills’ launch its new streaming service. It has been
28 publicized that Blackpills is launching its service with twelve digital projects, one of

1 which is *Playground*. Besson is informed and believes, and based thereon alleges,
2 that Blackpills’ streaming service is currently available to consumers in the United
3 States, and that *Playground* is available for streaming on that service.

4 12. Besson has not been involved in any of Blackpills’ series. He did not
5 create, write, or direct *Playground*. He has never had discussions with anyone at
6 Blackpills about the development of this series. Despite these facts, Blackpills has
7 persistently and falsely attributed *Playground* to Besson in order to capitalize on his
8 reputation and goodwill.

9 13. On March 1, 2017, the English language Twitter account for Blackpills
10 posted a cover photo of the *Playground* series, with the words “CREATED BY
11 LUC BESSON” beneath the show’s title, as well as the phrase “created by
12 @lucbesson” in the caption:



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1 14. Blackpills has also posted cover art for *Playground* on Instagram which
2 falsely claims that Besson is the creator of the series:



13
14 15. Besson is informed and believes, and based thereon alleges, that
15 Blackpills' Twitter and Instagram posts were accessible in the United States, and
16 that Blackpills purposefully directed these images and statements to consumers in
17 the United States to promote *Playground* and its streaming service.

18 16. These public claims by Blackpills that *Playground* was “Created by
19 Luc Besson” are blatantly and knowingly false. The phrase “created by” connotes
20 that Besson was the creator, writer, and/or director of the series (or at least one
21 episode thereof). In fact, Besson had no involvement in the creation, production, or
22 directing of *any* episodes of the series.

23 17. Blackpills executive Daniel Marhely (“Marhely”) has gone so far as to
24 fabricate an account of Besson working on *Playground* during a fictionalized hiatus
25 from his production of his new film *Valerian*. In an interview given to an online
26 magazine, Marhely was quoted as stating (in French) that Besson “took a break for a
27 few weeks” from filming *Valerian* “to film *Playground*.” Marhely added:

28 “[Besson] was in the middle of filming *Valerian*. He suggested several

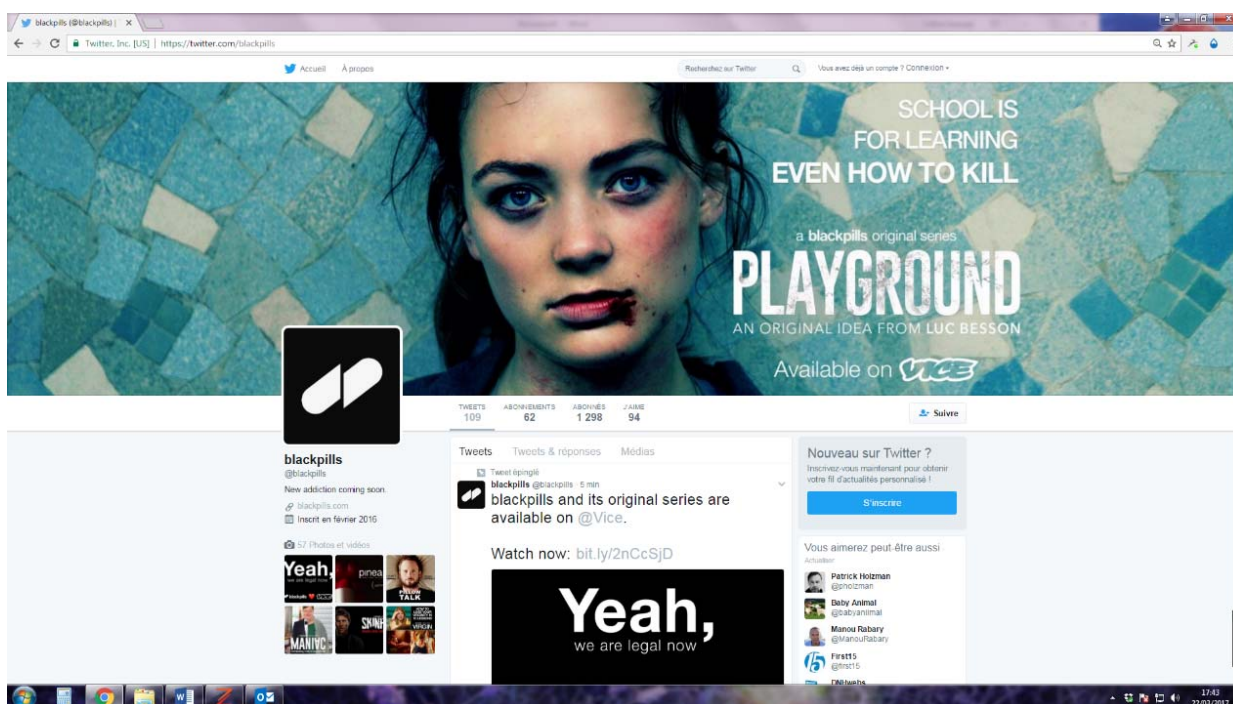
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1 projects to us and *Playground* was selected He loved the idea of
2 filming this series for a month, with a very small crew. It took him back
3 to when he was starting out, making his first films.”

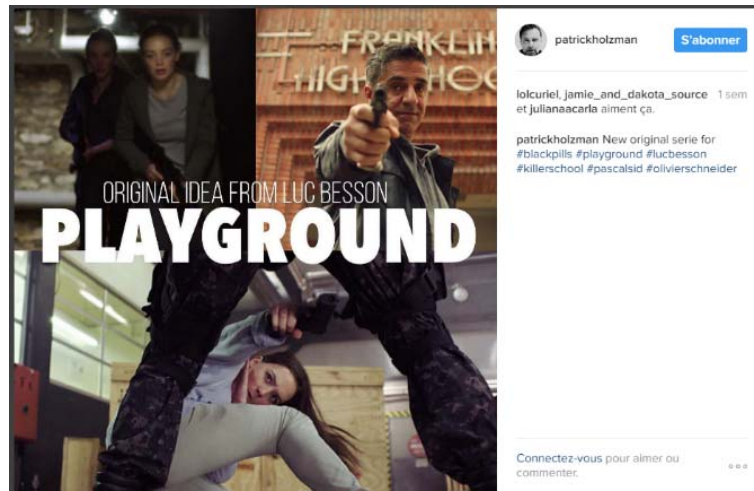
4 All of this is a complete lie. Besson did not take a break from *Valerian*, let alone to
5 film *Playground*. Besson had no involvement at all in the filming of *Playground*.

6 18. In addition to falsely describing Besson as the creator of *Playground*,
7 Blackpills has also repeatedly identified the series as being based on “AN
8 ORIGINAL IDEA FROM LUC BESSON,” including in a March 22, 2017 post on
9 Twitter:



22 Likewise, an Instagram post from Blackpills executive Patrick Holzman, shown on
23 the following page, posted a graphic describing *Playground* as being based on an
24 original idea from Besson:

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10 19. Besson is informed and believes, and based thereon alleges, that
11 Blackpills’ Twitter and Instagram posts were accessible in the United States, and
12 that Blackpills purposefully directed these images and statements to consumers in
13 the United States to promote *Playground* and its streaming service.

14 20. In addition, and also without Besson’s authorization, the opening
15 credits of *Playground* on Blackpills’ streaming service identify the series as based
16 on an “ORIGINAL IDEA BY LUC BESSON.” Besson is informed and believes,
17 and based thereon alleges, that Blackpills has streamed *Playground* in the United
18 States with this misleading credit and continues to do so.

19 21. Besson is informed, and believes, and based thereon alleges, that the
20 foregoing unauthorized uses of his name are merely examples. Besson is informed
21 and believes, and based thereon alleges, that Blackpills and its officers and
22 employees have repeatedly used Besson’s name to promote *Playground* in the
23 United States, including in interviews and other promotional efforts, and have
24 falsely described Besson as the creator, writer, and/or director of the series in doing
25 so. Besson never authorized Blackpills or its producing partners, Together Studio
26 and Covent, to use his name to promote *Playground* in this manner.

27 22. Blackpills’ unauthorized statements that *Playground* was “created by”
28 Besson are blatantly false and deceptive and are certain to cause the public to

1 associate the series with Besson and to erroneously believe that he is the creator,
 2 writer, and/or director of the show.

3 23. Similarly, Blackpills' unauthorized statements that that *Playground*
 4 was based "on an original idea from Luc Besson" falsely suggest that Besson is
 5 associated with or endorses, sponsors, or approves of this series. In fact, Besson has
 6 no association with *Playground* and does not endorse, sponsor, or approve of it.

7 24. Blackpills has misrepresented Besson's purported involvement in
 8 *Playground* and used his name without authorization with the obvious intention of
 9 capitalizing on Besson's fame and reputation to generate publicity for its nascent
 10 streaming service. In particular, Blackpills has falsely attributed *Playground* to
 11 Besson to coattail on his fame and reputation as a writer/director of action films
 12 driven by female leads (e.g., *La Femme Nikita*, *The Professional*, *Lucy*).

13 25. Pervasive consumer confusion has resulted from Blackpills' false
 14 statements about Besson's supposed involvement in *Playground*. The media has
 15 widely reported that Besson was actively involved in *Playground*. News articles are
 16 portraying Besson as the writer or director of Blackpills' *Playground*. An online
 17 *Variety* article states, for example: "Watch Luc Besson's 'Playground' Trailer for
 18 Blackpills." Other articles state that *Playground* "has been created by famed French
 19 filmmaker Luc Besson"; that Besson's "latest scripted foray is a web series called
 20 *Playground*"; that "Besson wrote a new web series titled *Playground*"; that
 21 *Playground* is an "Original[] From Luc Besson"; and that *Playground* is "a new
 22 online action series from Luc Besson." All of this confusion has been caused by
 23 Blackpills' false attribution of *Playground* to Besson, and by its unauthorized use of
 24 his name to promote the series.

25 26. Blackpills' false designation of *Playground* as a Besson project has
 26 been and will continue to be damaging to Besson. *Playground* is being credited to
 27 Besson despite that he has had no creative involvement in the series. As a result,
 28 Besson has lost control of his reputation due to Blackpills' unauthorized and

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1 misleading use of his name.

2 27. Blackpills’ misrepresentations and the confusion they have caused are
3 interfering with Besson’s promotion of *Valerian*. While actively promoting
4 *Valerian*, Besson is being forced to spend time answering questions about his
5 supposed involvement in *Playground*.

6 28. Further, Blackpills’ false statements that Besson took a break in the
7 middle of filming *Valerian* to film *Playground* is further damaging to Besson’s
8 reputation. These statements cavalierly portray Besson as breaching his exclusive
9 services obligation to French film studio EuropaCorp ,as breaching his obligations
10 to direct *Valerian*, and as being less than fully committed to that film and to its
11 many producing partners and investors, which could not be further from the truth.

12 **FIRST CLAIM FOR RELIEF**

13 **(False and Misleading Association – 15 U.S.C. § 1125(a))**

14 29. Besson incorporates all prior allegations of this Complaint by this
15 reference.

16 30. Besson’s name is famously associated with him and his services as a
17 writer, director, and producer of films and televisions series.

18 31. Blackpills’ use in commerce of Besson’s name to promote its projects
19 is likely to confuse, cause mistake, or deceive the public into believing (falsely) that
20 Besson is associated with, or sponsors, endorses, or approves of *Playground* and
21 Blackpills’ streaming service generally. In fact, Besson had no involvement in
22 *Playground* and does not sponsor, endorse, or approve of the project.

23 32. As a result of Blackpills’ unauthorized use of Besson’s name, Besson
24 has suffered, and will continue to suffer, damages in an amount to be proven at trial.
25 Besson has further suffered and will continue to suffer irreparable harm unless
26 Blackpills’ use in commerce of his name is enjoined and restrained by this Court.

27 33. Blackpills’ use in commerce of Besson’s name was intended to
28 capitalize on and trade off his established goodwill, and was in bad faith and with

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1 knowledge (or reckless disregard of the fact) that such use of his name would cause
2 confusion, mistake, or deception.

3 34. Besson is entitled to damages, including without limitation
4 disgorgement of Blackpills’ profits arising out of its unauthorized use of Besson’s
5 name in connection with *Playground*.

6 35. Blackpills’ misconduct is of such a nature that this is an “exceptional”
7 case within the meaning of the Lanham Act, entitling Besson to recover his
8 reasonable attorney’s fees.

9 **SECOND CLAIM FOR RELIEF**

10 **Violation of the Right of Publicity**

11 36. Besson incorporates all prior allegations of this Complaint by this
12 reference.

13 37. Under California common law and Civil Code section 3344, Besson
14 owns a right of publicity in his name and persona.

15 38. Blackpills has misappropriated Besson’s well-known name for
16 commercial purposes in connection with *Playground*.

17 39. Blackpills’ use of Besson’s name has at all times been without his
18 consent.

19 40. The unauthorized use by Blackpills’ of Besson’s name constitutes a
20 commercial misappropriation of his right of publicity in violation of California
21 common law and Section 3344 of the California Civil Code.

22 41. As a direct and proximate result of Blackpills’ wrongful conduct,
23 Besson has suffered, and will continue to suffer, damages in an amount to be proven
24 at trial.

25 42. Blackpills has been unjustly enriched by its unauthorized use of
26 Besson’s name, thus entitling Besson to disgorgement of all income, profits, and
27 other benefits resulting from Blackpills’ conduct, in an amount to be determined
28 according to proof at trial.

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PRAYER FOR RELIEF

WHEREFORE, Besson pray for judgment as follows:

- A. For preliminary and permanent injunctive relief prohibiting Blackpills from using Besson’s name, likeness, identity, or persona for any purposes;
- B. For monetary damages according to proof;
- C. For disgorgement of profits under the Lanham Act and under California law;
- D. For pre-judgment and post-judgment interest according to proof and to the maximum extent allowed by law;
- E. For attorneys’ fees and costs of suit pursuant to 15 U.S.C. § 1117, California Civil Code § 3344, and any and all other sources of law; and
- F. For such other relief as may be just and proper.

DATED: June 21, 2017

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KUMP & ALDISERT LLP

By: /s/ Gregory Korn
Gregory Korn
Attorneys for LUC BESSON

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

DATED: June 21, 2017

KINSELLA WEITZMAN ISER
KUMP & ALDISERT LLP

By: /s/ Gregory Korn
Gregory Korn
Attorneys for LUC BESSON

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