

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

HUMAN SYNERGISTICS, INC.,

Plaintiff,

Case No.

v.

District Judge

**GOOGLE, LLC;
CATALYST CONSULTING TEAM;
and WILLIAM L. UNDERWOOD,**

Magistrate Judge

Defendants.

COMPLAINT

I. Introduction

1. Plaintiff Human Synergistics, Inc. (“HS”) brings this complaint against Defendants Google, LLC (“Google”), Catalyst Consulting Team (“Catalyst”), and William Lessing Underwood (“Underwood”) for the blatant violation of HS’s intellectual property rights in one of its most iconic works – the group team-building exercise alternatively entitled *The Desert Survival Situation* or *The Desert Survival Problem* (individually and collectively, “Desert Survival”), as well as for Catalyst and Underwood’s infringement of other HS copyrighted works. First published nearly 50 years ago, Desert Survival has been and still is distributed nationally and internationally; and it continues to be widely used by businesses, governmental entities, schools, and other institutions for training and

developing managers and other members of organizations. HS holds the rights to numerous copyright registrations for Desert Survival and associated works.

2. Google obtained Desert Survival, or a substantially similar version thereof, from Catalyst – a client, and now a competitor, of HS – which had purchased copies of it from HS. Catalyst, without HS’s consent, incorporated Desert Survival into a management training and development program designed for Google to use internally. After apparently using it internally without HS’s consent, Google then, also without HS’s consent, published a version of the exercise in nearly identical form to the HS original in a *New Manager Program Participant Workbook* (the “Workbook”), which Google posted on the internet. Google also published, in a *New Manager Program Facilitator Guide* (“Facilitator Guide”) and a companion work entitled the *New Manager Presentation Slides* (“Presentation Slides”), material from HS’s copyrighted *Desert Survival Leader’s Guide* (the “Leader’s Guide”), which is designed to assist the trainer in conducting the group exercise. Google made the Workbook, Facilitator Guide, and Presentation Slides available for download to the public -- free of charge -- and encouraged the public to download and use the materials. As a result of the actions of Google and Catalyst, Desert Survival and associated HS content was made available to the world at no cost, seriously compromising the value of one of HS’s most popular and lucrative products.

3. Catalyst and Underwood have, upon information and belief, also infringed HS's business exercise entitled *Project Planning Situation* ("Project Planning"), as well as the *Project Planning Situation Leader's Guide* ("PPS Leader's Guide"), designed to be used in conjunction with Project Planning, by reproducing and distributing substantially similar copies of those works without the authorization of HS.

4. HS therefore brings claims for direct copyright infringement; contributory copyright infringement; vicarious copyright infringement; violations of the DMCA; false designation of origin; false advertising, unfair competition; and deceptive trade practices, and seeks all equitable and legal relief available to it for said violations, as well as recovery of its costs and expenses, including reasonable attorneys' fees.

II. The Parties

5. Human Synergistics, Inc. is a Michigan corporation, incorporated in 1974, having its principal place of business at 39819 Plymouth Rd., Plymouth, Michigan 48170.

6. Google, LLC, upon information and belief, is a Delaware limited liability company, having its principal place of business in Mountain View, California. Google also has major corporate offices located within this District at 2300 Traverwood Drive, Ann Arbor, Michigan and, upon information and belief,

at 52 Henry Street in Detroit, Michigan.

7. Catalyst Consulting Team, upon information and belief, is a California corporation, having its principal place of business in Santa Cruz, California.

8. William L. Underwood is, upon information and belief, a resident of California, and the sole officer, director, and owner of Catalyst.

III. Jurisdiction and Venue

9. This action arises primarily under the U.S. Copyright Act, 17 U.S.C. § 101 *et seq.*, as well as under the Lanham Trademark Act, 15 U.S.C. § 1051 *et seq.* This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 1332 (diversity jurisdiction); 28 U.S.C. § 1337 (intellectual property rights jurisdiction); and 28 U.S.C. § 1367 (supplemental jurisdiction over state law claims).

10. Personal jurisdiction of this Court over Google is proper pursuant to MCL §§ 600.711 and/or 600.715 (general and limited jurisdiction over corporations), and comports with principles of due process under the U.S. Constitution. Google continuously and systematically conducts business in Michigan; has two major corporate offices within the State; is registered to do business in Michigan; and has a registered agent for service of process. Google published its infringing works on its interactive internet website, making the works

available for free download to residents of Michigan, and, upon information and belief, residents of Michigan have obtained copies of the infringing works directly from Google's website.

11. Personal jurisdiction of this Court over Catalyst and Underwood is proper pursuant to MCL §§ 600.711 and/or 600.715 (general and limited jurisdiction over corporations), and MCL §§ 600.701 and/or 600.705 (general and limited jurisdiction over individuals), and comports with principles of due process under the U.S. Constitution. Catalyst has regularly and systematically done business with HS in Michigan, purchasing a variety of products including copies of Desert Survival and associated copyrighted material. Catalyst then provided Desert Survival and associated material to Google, which published the infringing works, with clear knowledge of the harm that this would visit upon HS. Catalyst and Underwood intentionally infringed both the Desert Survival and Project Planning materials with full knowledge that they were proprietary to HS. Underwood himself directed and controlled, and directly benefited from, Catalyst's actions that are the subject of this Complaint; has corresponded with HS in Michigan; and, upon information and belief, has traveled to Michigan to do business with HS and/or to attend seminars or workshops conducted by HS.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

IV. Factual Background

A. HS's Business and Intellectual Property.

13. For 45 years, HS has been a world leader in the development of validated surveys, diagnostic inventories, and simulations and exercises for the assessment and development of individuals, teams, and organizations.

14. Headquartered in Plymouth, Michigan, HS has affiliate offices in Illinois, Australia, Belgium, Brazil, the British Isles, Canada, Finland, Germany, Greece, Hungary, the Netherlands, New Zealand, Romania, Serbia, and South Korea.

15. The Applied Research Center (“ARC”), d/b/a Human Synergistics International, is HS’s parent entity. In or about 2005, HS assigned various copyrights to ARC, including the copyrights for Desert Survival, the Leader’s Guide, Project Planning, and the PPS Leader’s Guide. ARC subsequently granted HS an exclusive U.S. license to these copyrights, as well as the exclusive right to enforce the copyrights and to sue for past, present, and future infringement. (For purposes of copyright ownership, ARC and HS, hereafter, are collectively referred to as “HS.”)

16. HS works with organizations, both directly and through independent consultants and training and development specialists, to assist them in reaching their full potential by strengthening their individual contributors, leaders, work

teams, and organizational cultures. HS's assessments and simulations have been used by upwards of 20 million individuals in the context of programs designed to enhance their personal and organizational effectiveness.

17. As a key component of its programs, HS offers a wide variety of valid and reliable style-based assessment and measurement products that enhance and support the growth and development of individuals, leaders, teams, and organizations. These products have been perfected over decades of development, testing, and verification and comprise HS's portfolio of extremely valuable intellectual property.

18. Desert Survival is one of HS's first and, over the past 45 years, most popular and successful products. This exercise requires a team of individuals to place themselves in a precarious situation – their plane has crashed in the Sonoran Desert and they are left with just 15 items. Members of each team are asked, on an individual basis, to rank the items in order of their importance to their survival. With their teams, participants are then asked to discuss and analyze the situation and agree on a new team ranking of the items in their order of their importance for survival. The Desert Survival experience shows group members that (1) teams generally outperform their individual members, (2) the quality and/or acceptance of a team's solution depends on group processes and the extent to which constructive rather than defensive styles are used, and (3) teams and their members

can increase their effectiveness by developing such styles and improving the ways in which they interact and approach tasks.

19. The various updated versions of Desert Survival, and its ancillary materials, including participants' booklets, leaders' guides, video enhancements and observers' guides, are the subject of at least 34 federally registered copyrights. (See **Exhibit 1**, HS's Desert Survival Related Registered Copyrights. See also **Exhibit 2**, exemplar of U.S. Copyright Registration for Desert Survival, Reg. No. TX 3-415-271, listing prior registration nos. A-220147; A-246024; A-377350; A-480046; and A-542155.)

20. Annexed to this Complaint are three editions of HS's Desert Survival. Annexed as **Exhibit 3** is a copy of *The Desert Survival Situation – A Group Decision Making Experience for Examining and Increasing Individual and Team Effectiveness*, which includes a copyright notice stating: "All material contained herein is copyright © 1974 by Human Synergistics," along with a warning against unauthorized reproduction.

21. Annexed as **Exhibit 4** is a copy of *Desert Survival Situation – A Group Problem Solving Simulation*, which includes a copyright notice stating: "All material contained herein is copyright © 1974, 1987 by Human Synergistics," along with a warning against unauthorized reproduction.

22. Annexed as **Exhibit 5** is a copy of *Desert Survival Situation –*

Participant's Booklet, which includes a copyright notice stating: "Copyright © 2003 by Human Synergistics International. All Rights Reserved."

23. HS also owns the copyrights in the Leader's Guide. Annexed as **Exhibit 6** is a copy of a copyright registration for the *Desert Survival Situation Leader's Guide* (TX-3-401-641), identifying it along with previous titles under which the work had been published, i.e., *The Desert Survival Problem Manual* and *Manual for the Desert Survival Problem*. Annexed as **Exhibit 7** is a copy of a more recent copyright registration for the Leader's Guide (TX-8-159-868). The Leader's Guide also contains a clear copyright notice.

24. HS has been selling Desert Survival and its ancillary materials continuously over the past 45 years and has always maintained clear copyright notices on its materials.

25. HS also has common law trademark rights in the mark "Desert Survival," which it has used on its Desert Survival exercises, leaders' guides, and ancillary materials since at least as early as 1974.

26. HS has an application currently pending before the U.S. Patent and Trademark Office for the mark "DESERT SURVIVAL," Serial No. 88/165116, citing its use dating back to 1974.

B. Google's Infringing Activity

27. In March 2018, HS personnel discovered a Google website at

www.rework.withgoogle.com, being operated by Google's "re:Work" group, advertising three new publications – "Google's new manager student workbook"; "Google's new manager training facilitator guide"; and "Google's new manager training presentation slides" – from which the Workbook, the Facilitator Guide, and the Presentation Slides could be downloaded for free. Annexed as **Exhibit 8** is a snapshot from the www.rework.withgoogle.com website showing the links to the Workbook, Facilitator Guide, and Presentation Slides. HS accessed the works and downloaded them.

28. In reviewing the Workbook, HS found that it contained a substantially similar copy of HS's Desert Survival, which Google had named *Decision Making: Desert Survival* ("DMDS"). Annexed as **Exhibit 9** is an excerpt from the Workbook, displaying the DMDS exercise. Comparing **Exhibit 9** to **Exhibit 3** demonstrates that Google used all of the key facts from the narrative setting up the exercise, while deleting some of the less critical text to save space. Google also used the identical 15 items that comprise the exercise, merely changing the order of presentation and making immaterial changes to some wording, *e.g.*, changing "a book entitled Edible Animals of the Desert" to "Edible Animals of the Desert' book." For all relevant purposes, the *DMDS* is a copy of Desert Survival.

29. In reviewing the Facilitator Guide and Presentation Slides, HS discovered that Google had also copied HS's answer key – published in HS's

Leader's Guide – by reproducing and summarizing the rankings and rationale by HS's experts regarding the order of importance of the 15 items. (Desert Survival was developed in part by Alonzo W. Pond, a survival expert employed by the U.S. Air Force who, during World War II, worked with Allied Forces in the Sahara. HS continues to work with experts to review and update the scenario, rankings, and rationale.) Annexed as **Exhibit 10** is an excerpt from HS's Leader's Guide, listing the items in order of importance. Annexed as **Exhibit 11** is an excerpt from Google's Facilitator Guide, including a slide in the left-hand margin entitled "Expert Answers: Desert Survival" and ranking all of the items in order of importance. Although not highly legible, the text of the Facilitator Guide indicates that Google copied the subjective order of ranking developed and used by HS, as, among other things, it lists "Cosmetic Mirror" as the most important item, just as HS does.

30. In the Presentation Slides, Google displays the expert rankings of the items and also includes a brief parenthetical of the rationale regarding the usefulness of each of the 15 items. Annexed as **Exhibit 12** is the relevant excerpt from Google's Presentation Slides. A comparison of **Exhibit 12** with **Exhibit 10** (the Leader's Guide), shows that Google's order of ranking is identical to HS's, and that Google used thumbnail descriptions of the usefulness of each item distilled from the reasoning and rationale provided in HS's Leader's Guide.

31. As demonstrated by **Exhibits 3, 4, 5, and 10**, all versions of HS's Desert Survival materials carry prominent copyright notices. In Google's DMDS and Facilitator Guide, however, HS's copyright notice was removed and/or omitted, and the following language was included: "This content is from rework.withgoogle.com (the "Website") and may be used for non-commercial purposes in accordance with the terms of use set forth on the Website." *See Exhibit 9.*

32. Upon finding Google's infringement of the Desert Survival exercise and the Leader's Guide, HS conducted additional internet searches to determine the scope of the infringement. HS found that links to sites carrying Google's Workbook, Facilitator Guide, and/or Presentation Slides had become available on virtually all of the major search engines. HS also found that there were a number of individual sites on which the Workbook, Facilitator Guide, and/or Presentation Slides were available for free public download or with links to Google's "re:Work" website.

33. Upon conducting additional research, HS found that the Workbook, Facilitator Guide, and/or Presentation Slides may have been available for free download from Google and other websites since as early as 2015.

34. HS promptly sent a cease and desist letter to Google and then, after receiving no response from Google for two weeks, engaged in a campaign of

sending takedown notices to all the largest of the search engines – including Google – carrying links to websites carrying the Workbook, Facilitator Guide, and/or Presentation Slides, as well as to individual website operators whose websites had downloads of the Workbook, Facilitator Guide, and/or Presentation Slides available.

35. Eventually, Google removed the Workbook from its website. HS was ultimately successful in having links to the Workbook, Facilitator Guide, and Presentation Slides taken down from most other search engines and websites that had made the works available for downloading.

36. Upon further investigation, it became apparent that, even prior to HS communicating with Google and alerting it to its infringement of HS copyrights, Google had published a new edition of the Facilitator Guide and Presentation Slides, in which it had removed certain references to Desert Survival or content from HS materials. Thus, it appears that Google may have been aware that it was infringing HS's copyrighted material even before being alerted to that fact by HS. Nonetheless, Google continued to post the original version of the Workbook (still containing the DMDS), along with new editions of the Facilitator Guide and the Presentation Slides, until several weeks after it received a cease and desist letter from HS. Moreover, versions of the Facilitator Guide and Presentation Slides containing references to Desert Survival and content from HS's Leader's Guide

still appeared on the internet.

37. At this point, HS does not know how many people and organizations have downloaded the Desert Survival content as published by Google; but given the number of internet outlets worldwide on which it was available (or cited with links) for as long as three years, the number of downloads could be staggering. Moreover, for each download of the infringing works, there is a strong possibility of further circulation by the individuals who downloaded it. What is clear is that the wrongful conduct of Google (and Catalyst/Underwood, as described below) has seriously compromised the economic viability of HS's Desert Survival exercise.

C. Catalyst's and Underwood's Infringing and Wrongful Activity

38. Catalyst is a company that provides training and consultation services and materials to organizations for the purpose of assessing and improving organizational culture and the individual effectiveness of the organization's personnel. Thus, Catalyst provides services and products that are competitive to those of HS.

1. Infringement of Desert Survival

39. Catalyst uses a variety of training materials, including both those that it creates and those that it purchases from other companies, such as HS. Catalyst has, for many years, purchased materials from HS, including Desert Survival, which it and its principal, Underwood, knew to be proprietary to HS.

40. HS sells, and Catalyst has purchased from HS, copies of Desert Survival materials, for use in live training sessions, wherein each participant receives a copy of the exercise and the group trainer or facilitator uses a purchased copy of the Leader's Guide, to permit the group(s) to effectively experience the Desert Survival simulation.

41. HS does not permit purchasers to reproduce Desert Survival and its ancillary materials in any form (digitally, electronically, or in hard copy); to provide them to third parties; to display them publicly; or to create derivative works therefrom.

42. Underwood has a long history of communicating and conducting transactions with HS on behalf of Catalyst. Upon information and belief, Underwood has traveled to HS's headquarters in Michigan to participate in one or more seminars or workshops and is well aware of the materials HS has to offer. In fact, in recent years, when HS instituted a new policy of requiring HS certification of companies or individuals who wanted to use one of HS's popular instruments for measuring individual styles, Underwood refused to complete the accreditation process. From that point on, Catalyst's purchases of HS products substantially diminished, but not before Catalyst had purchased numerous copies of Desert Survival.

43. Moreover, Underwood falsely advertised in his biography posted on

Catalyst's website that "[h]e is certified in . . . Human Synergistic (sic) Assessments. . . ," which he is not. Underwood and Catalyst continue to make that claim on Catalyst's website, despite HS having informed him, through Catalyst's counsel, that he is not certified or accredited to use HS assessments such as organizational surveys and personal inventories. (Annexed as **Exhibit 13** is snapshot of Underwood's biography posted on www.catalystconsulting.com.) Underwood has also posted a biography on another website claiming that "[h]e is approved to use a variety of instruments including . . . the Human Synergistics Life Style Inventory" Underwood is not approved to use HS's LSI and, in fact, he refused to register and complete HS's accreditation program to obtain certification in that instrument. (Annexed as **Exhibit 14** is a snapshot of Underwood's biography posted at www.mobiusleadership.com.) Although some years ago Underwood traveled to Michigan for an HS workshop or seminar, that event was held prior to the introduction of HS's accreditation system.

44. In or about 2010, Catalyst contracted with Google to provide consulting and training services to Google employees.

45. At some point thereafter, and without HS's consent, Catalyst provided a near complete copy of Desert Survival to Google – either alone, or as a part of some deliverable – as well as content from HS's Leader's Guide. Google and/or Catalyst then used these materials in training programs for new managers at

Google.

46. In or about 2015, Google then published the DMDS in the Workbook, and published the Facilitator Guide and Presentation Slides containing material copied from HS's Leader's Guide, again without HS's consent, which were then posted by Google on the internet.

2. Infringement of Project Planning

47. Catalyst, upon information and belief, based on material published on Catalyst's website, is independently liable for the infringement of additional works of HS. As early as 1975, HS developed, and has since used continuously, an exercise entitled the *Project Planning Situation: an experience in team planning* ("Project Planning"). Project Planning is a team business simulation designed to promote general planning proficiencies and competence within an organization. Briefly stated, in Project Planning, a team has been assigned responsibility for designing a plan for managing a secret project. The team members, first working independently and then working together, are tasked with sequencing 20 activities in the order they should be followed in managing the project. Annexed as **Exhibit 15** is a redacted copy of Project Planning, as posted on HS's website, which contains a comprehensive copyright notice.

48. HS has also published a *Project Planning Situation Leader's Guide* ("PPS Leader's Guide") to be used by the trainer or facilitator leading the team

simulation.

49. Both Project Planning and the PPS Leader's Guide are the subject of at least 28 U.S. registered copyrights. Annexed as **Exhibit 16** is a copy of one of the many copyright registrations for Project Planning. Annexed as **Exhibit 17** is one of the many copyright registrations for the PPS Leader's Guide.

50. Catalyst has published on its website an advertisement for *Project Planning Online – A Virtual Simulation*. Annexed as **Exhibit 18** is a snapshot from Catalyst's website in April 2018. In it, Catalyst first claims that "Catalyst created the *Project Planning Online Simulation*" Yet, on the same page, Catalyst admits that "[t]his online business simulation from Human Synergistics allows organizations to build their teamwork skills"

51. According to HS records, Catalyst has not purchased Project Planning from HS. Moreover, Catalyst is not authorized to reproduce, distribute, display, or make derivative works from Project Planning.

52. Indeed, after being informed that HS was claiming infringement of Desert Survival and ancillary materials by Catalyst, Catalyst removed from its website all references to Project Planning, even though that product had not, at that time, been initially identified by HS as one of the infringed works.

53. It is apparent from all circumstances, that Catalyst has infringed HS's Project Planning and that Catalyst attempted to conceal that fact by removing from

its website references to Project Planning.

54. At all times relevant hereto, Underwood was the principal owner and sole director of Catalyst. Underwood had knowledge of and directed Catalyst's infringing activities and directly benefited from them, both monetarily and in terms of enhancing Catalyst's and his own reputation in the industry.

V. Human Synergistics's Legal and Equitable Claims

COUNT I

COPYRIGHT INFRINGEMENT

(17 U.S.C. § 101 *et. seq.*)

(Against all Defendants)

55. HS repeats and realleges all paragraphs of this Complaint as if fully restated herein.

56. Catalyst, without the authorization or consent of HS, provided a substantial copy of Desert Survival to Google, in the form of the DMDS. Catalyst also provided Google with content from HS's Leader's Guide, including the expert rankings for the Desert Survival exercise.

57. Google, without the authorization or consent of HS, used the DMDS in its Workbook, and used the expert rankings and rationale and other material from HS's Leader's Guide in its Facilitator Guide and Presentation Slides.

58. Google then published the Workbook, Facilitator Guide, and Presentation Slides on the internet, with a statement encouraging the public to

download these works for free.

59. Defendants, without the authorization or the consent of HS, have thereby reproduced, caused to be reproduced, distributed, displayed, and/or purported to authorize the making of unauthorized copies of HS's Desert Survival and Leader's Guide, in whole or in substantial part, and/or prepared derivative works based upon Desert Survival and the Leader's Guide.

60. Furthermore, as described hereinabove, Catalyst and Underwood have infringed HS's Project Planning exercise and PPS Leader's Guide by reproducing, distributing, and/or publicly displaying those copyrighted works without authorization from HS.

61. Defendants' conduct constitutes direct infringement of HS's exclusive rights under the Copyright Act to reproduce, distribute, and display Desert Survival and the Leader's Guide (as to all Defendants), as well as Project Planning and the PPS Leader's Guide (as to Catalyst and Underwood only), and/or to prepare derivative works based upon these works.

62. Defendants' acts of infringement have been willful, intentional, and purposeful, in disregard of, and/or indifferent to, the rights of HS.

63. The natural, probable, and foreseeable result of Defendants' wrongful conduct has been and will continue to be to deprive HS of substantial benefits of obtaining economic benefit from Desert Survival and the Leader's Guide (as to all

Defendants), as well as from Project Planning and the PPS Leader's Guide (as to Underwood and Catalyst only), to deprive HS of goodwill, and to injure HS's relations with present and prospective customers.

64. HS has lost and will continue to lose substantial revenues and will sustain damages as a result of Defendant's wrongful and infringing conduct. Defendants' wrongful conduct has also deprived and will continue to deprive HS of opportunities for expanding its goodwill.

65. As a direct and proximate result of the acts of Defendants alleged above, HS has already suffered irreparable damage and sustained lost profits, and Defendants have profited. HS has no adequate remedy at law to redress all of the injuries that Defendants have caused by their conduct.

66. By its actions alleged above, Defendants have infringed and may continue to infringe HS's copyrights in and relating to Desert Survival and the Leader's Guide (as to all Defendants), as well as Project Planning and the PPS Leader's Guide (as to Underwood and Catalyst only), by producing, distributing, and placing upon the market products that infringe these works and/or works derivative thereof.

67. HS is entitled to an injunction restraining Defendants, along with Defendants' officers, agents, servants, employees, and attorneys, and all other persons who are in active concert or participation with any of them, from engaging

in any further such acts in violation of the copyright laws of the United States.

68. HS is further entitled to recover from Defendants the damages it has sustained and will sustain, and any gains, profits, and advantages obtained by Defendants as a result of their wrongful and infringing conduct alleged above. At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained by HS.

69. HS anticipates, however, that it will be entitled to an award of damages including, but not limited to (i) Defendants' profits obtained from the distribution and use of Desert Survival and the Leader's Guide (as to all Defendants), as well as Project Planning and the PPS Leader's Guide (as to Underwood and Catalyst only), and (ii) the value to HS of lost potential revenue from the sale of the infringed works.

70. Alternatively, HS is entitled to statutory damages for infringement of its registered copyrights.

71. HS is entitled to any and all enhanced, exemplary, punitive, special, incidental, and consequential damages available under applicable law for Defendants' wrongful conduct.

72. HS is further entitled to an award of its costs and expenses, including its reasonable attorney fees, as a result of Defendants' knowing, willful, and

intentional misconduct. HS is further entitled to such other and further relief as the Court deems just.

73. Defendants are liable to HS for copyright infringement.

COUNT II
CONTRIBUTORY COPYRIGHT INFRINGEMENT
(17 U.S.C. § 101 *et. seq.* and Common Law)
(Against All Defendants)

74. HS repeats and realleges all paragraphs of this Complaint as if fully restated herein.

75. Catalyst and Underwood (collectively, the “Catalyst Defendants”) in addition to wrongfully reproducing and/or publishing an infringing version of HS’s Desert Survival and material from the Leader’s Guide, have also enabled, induced and encouraged others to do so.

76. The Catalyst Defendants provided the DMDS to Google for the purpose of permitting Google to republish it in the Workbook, or with the knowledge or expectation that Google would republish it; and provided material copied from HS’s Leader’s Guide for the purpose of having Google republish it in the Facilitator Guide, or with the knowledge or expectation that Google would republish it.

77. The Catalyst Defendants did so despite their knowledge of HS's ownership of the copyrights in Desert Survival and the Leader's Guide, in derogation of HS's copyright notices appearing on these works, and with knowledge that its publication and Google's republication of the DMDS and the Leader's Guide material would infringe HS's rights in these works.

78. HS has been substantially harmed by the publication of the DMDS to the public-at-large, and by the as-yet undetermined number of free downloads of the DMDS engendered by the Catalyst Defendants' provision of the DMDS to Google.

79. HS has been substantially harmed by the publication of Leader's Guide material to the public-at-large, and by the as-yet undetermined number of free downloads of the Leader's Guide material engendered by the Catalyst Defendants' provision of this material to Google.

80. Thus, the Catalyst Defendants induced, caused, and/or materially contributed to third parties' infringement of HS's Desert Survival and the Leader's Guide.

81. Google published on the internet the Workbook containing the infringing DMDS, along with the Facilitator Guide and Presentation Slides containing the Leader's Guide material, with a statement encouraging the public to download them for free and use them.

82. In publishing the Workbook, Facilitator Guide, and Presentation Slides in that manner, Google must have known or been aware of the likelihood that members of the public who downloaded the infringing material for free would republish it – on the internet and perhaps elsewhere. This was in fact the case, as HS discovered numerous other websites where the Google Workbook and Facilitator Guide were made available for free downloading to the public-at-large, as a result of Google’s publication and encouragement to the public to download and use the materials.

83. Thus, Google induced, caused, and/or materially contributed to third parties’ infringement of HS’s Desert Survival and Leader’s Guide.

84. Defendants’ acts of infringement have been willful, intentional, and purposeful, in disregard of, and/or indifferent to the rights of HS.

85. The natural, probable, and foreseeable result of Defendants’ wrongful conduct has been and will continue to be to deprive HS of substantial benefits of obtaining economic benefit from Desert Survival and the Leader’s Guide, to deprive HS of goodwill, and to injure HS’s relations with its present and prospective customers.

86. HS has lost and will continue to lose substantial revenues and will sustain damages resulting from Defendants’ wrongful and infringing conduct.

Defendants' wrongful conduct has also deprived and will continue to deprive HS of opportunities for expanding its goodwill.

87. As a direct and proximate result of the acts of Defendants alleged above, HS has already suffered irreparable damage and sustained lost profits, and Defendants have profited. HS has no adequate remedy at law to redress all of the injuries that Defendant has caused and intends to cause by its conduct.

88. By its actions alleged above, Defendants have contributorily infringed and may continue to contributorily infringe HS's copyrights in and relating to Desert Survival and the Leader's Guide by inducing, causing, or materially contributing to others producing, distributing, and placing upon the market products that infringe these works and/or works derivative thereof.

89. HS is entitled to an injunction restraining Defendants, along with Defendants' officers, agents, servants, employees, and attorneys, and all other persons who are in active concert or participation with any of them, from engaging in any further such acts in violation of the copyright laws of the United States.

90. HS is further entitled to recover from Defendants the damages it has sustained and will sustain, and any gains, profits, and advantages obtained by Defendants as a result of Defendants' acts of contributory infringement alleged above, as well as any losses sustained by HS as a result of same. At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained

by HS.

91. HS is entitled to any and all enhanced, exemplary, punitive, special, incidental, and consequential damages available under applicable law for Defendants' wrongful conduct.

92. HS is further entitled to an award of its costs and expenses, including its reasonable attorney fees, as a result of Defendants' knowing, willful, and intentional misconduct.

93. HS is further entitled to such other and further relief as the Court deems just.

94. Defendants are liable to HS for contributory copyright infringement.

COUNT III

VICARIOUS COPYRIGHT INFRINGEMENT **(17 U.S.C. § 101 *et. seq.* and Common Law)** **(Against Defendant Underwood)**

95. HS repeats and realleges all paragraphs of this Complaint as if fully restated herein.

96. At all times relevant hereto, Defendant Underwood was aware that Desert Survival, the Leader's Guide, Project Planning, and the PPS Leader's Guide were proprietary works of HS and that HS owned the copyrights to these works.

97. At all times relevant hereto, Defendant Underwood, as principal owner, chief officer, and sole director of Catalyst, had the ability to supervise and

control Catalyst's wrongful and infringing conduct, as alleged herein.

98. Catalyst provided the DMDS and the Leader's Guide material to Google pursuant to a services agreement; and Catalyst profited from the services it provided Google, including the provision to Google of the DMDS and the Leader's Guide material.

99. Catalyst also has reproduced and distributed substantially similar copies of Project Planning and the PPS Leader's guide without authorization from HS; and Catalyst has profited from its unauthorized and infringing use of those works.

100. Underwood, as principal owner of Catalyst, had an obvious and direct financial interest in the infringement by Catalyst and Google, as he was the recipient of most, if not all, of Catalyst's net profits, which would have been enhanced by Catalyst providing the DMDS and the Leader's Guide material to Google under the terms of their services agreement.

101. Defendant Underwood's acts of vicarious infringement have been willful, intentional, and purposeful, in disregard of, and/or indifferent to the rights of HS.

102. The natural, probable, and foreseeable result of Defendant's wrongful conduct has been and will continue to be to deprive HS of substantial economic benefits from Desert Survival, the Leader's Guide, Project Planning, and the PPS

Leader's Guide; to deprive HS of goodwill; and to injure HS's relations with its present and prospective customers.

103. HS has lost and will continue to lose substantial revenues and will sustain damages resulting from Defendant's wrongful and infringing conduct. Defendants' wrongful conduct has also deprived and will continue to deprive HS of opportunities for expanding its goodwill.

104. As a direct and proximate result of the acts of Defendant Underwood alleged above, HS has already suffered irreparable damage and sustained lost profits, and Defendant Underwood has profited. HS has no adequate remedy at law to redress all of the injuries that Defendant has caused.

105. By his actions alleged above, Defendant Underwood has vicariously infringed and may continue to vicariously infringe HS's copyrights in and relating to Desert Survival, the Leader's Guide, Project Planning, and the PPS Leader's Guide, by inducing, causing, or materially contributing to others producing, distributing, and placing upon the market products that infringe those works and/or works derivative thereof, or by failing to prevent infringing acts within his supervision and control.

106. HS is entitled to an injunction restraining Defendant, along with Defendant's officers, agents, servants, employees, and attorneys, and all other

persons who are in active concert or participation with any of them, from engaging in any further such acts in violation of the copyright laws of the United States.

107. HS is further entitled to recover from Defendant the damages it has sustained and will sustain, and any gains, profits, and advantages obtained by Defendant resulting from Defendant's acts of vicarious infringement alleged above, as well as any losses sustained by HS as a result of same. At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained by HS.

108. HS is entitled to any and all enhanced, exemplary, punitive, special, incidental, and consequential damages available under applicable law for Defendant's wrongful conduct.

109. HS is further entitled to an award of its costs and expenses, including its reasonable attorney fees, as a result of Defendant's knowing, willful, and intentional misconduct.

110. HS is further entitled to such other and further relief as the Court deems just.

111. Defendant Underwood is liable to HS for vicarious copyright infringement.

COUNT IV

VIOLATION OF DIGITAL MILLENNIUM COPYRIGHT ACT **(17 U.S.C. § 1202)**

(Against All Defendants)

112. HS repeats and realleges all paragraphs of this Complaint as if fully restated herein.

113. As noted previously, all copies of HS's Desert Survival and the Leader's Guide contain clear and prominent copyright notices stating the name of the author, the year of the copyright, and a statement that HS reserved all rights in its copyrighted work.

114. All copies of HS's Desert Survival contained the title of the work – variously *Desert Survival Situation* or *Desert Survival Problem* – prominently displayed on the cover of the participant's booklet, as well as on the Leader's Guide.

115. This was the case with regard to the copies of Desert Survival and the Leader's Guide purchased by Catalyst from HS.

116. The infringing DMDS, when it appeared in Google's Workbook, and the Leader's Guide material, when it appeared in Google's Facilitator Guide, had HS's copyright notice removed and/or omitted, and language indicating that Google was the source of the works was inserted.

117. The name of the Desert Survival exercise had also been changed from *Desert Survival Situation* to *Decision Making: Desert Survival*.

118. As of the date of the filing of this Complaint, neither Google nor Catalyst had honored HS's request for a copy of the deliverable(s) provided by Catalyst to Google pursuant to their contract. Thus, at this point, HS is unable to ascertain which of the Defendants caused the removal and/or omission of HS's copyright notices and the changed name of the exercise.

119. The Digital Millennium Copyright Act ("DMCA") defines "copyright management information" as including, among other things, the title of the work, other information identifying the work, and the information set forth on a notice of copyright.

120. Section 1202(a) of the DMCA prohibits the knowing provision or distribution of copyright management information, with the intent to induce, enable, facilitate, or conceal copyright infringement.

121. Section 1202(b) of the DMCA prohibits the intentional removal of any copyright management information, including the distribution of works, knowing that the copyright information has been removed or altered, without authority of the copyright owner.

122. In violation of 17 U.S.C. § 1202, Defendants knowingly, and without HS's authority, removed copyright management information from Desert Survival and the Leader's Guide, and published false copyright management information in

the Google Workbook and Facilitator Guide, which was distributed to the public, with the intent to induce, enable, facilitate, and/or conceal copyright infringement.

123. As a direct and proximate result of the acts of Defendants alleged above, HS has already suffered irreparable damage and sustained lost profits, and Defendants have profited. HS has no adequate remedy at law to redress all of the injuries that Defendants have caused and intend to cause by their conduct.

124. By their actions alleged above, Defendants have infringed and may continue to infringe HS's copyrights in and relating to Desert Survival and the Leader's Guide by producing, distributing, and placing upon the market products containing false and/or altered copyright management information with regard to Desert Survival and the DMDS.

125. HS is entitled to an injunction restraining Defendants, along with Defendants' officers, agents, servants, employees, and attorneys, and all other persons who are in active concert or participation with any of them, from engaging in any further such acts in violation of the DMCA.

126. HS is further entitled to recover from Defendants the damages it has sustained and will sustain, and any gains, profits, and advantages obtained by Defendants as a result of Defendants' violations of the DMCA, in an amount to be proven at trial.

127. Upon information and belief, however, HS will be entitled to an award of damages including, but not limited to (i) Defendants' profits obtained from the distribution and use of Desert Survival and the Leader's Guide, and (ii) the value to HS of lost potential revenue from the sale of Desert Survival and the Leader's Guide.

128. HS is entitled to statutory damages for Defendants' violations of the DMCA.

129. HS is entitled to any and all enhanced, exemplary, punitive, special, incidental, and consequential damages available under applicable law for Defendants' wrongful conduct.

130. HS is further entitled to an award of its costs and expenses, including its reasonable attorney fees, as a result of Defendants' violations of the DMCA.

131. HS is further entitled to such other and further relief as the Court deems just.

132. Defendants are liable to HS for violations of the DMCA.

COUNT V

FALSE DESIGNATION OF ORIGIN

**(15 U.S.C. § 1125(a))
(Against All Defendants)**

133. HS repeats and realleges all paragraphs of this Complaint as if fully restated herein.

134. Catalyst provided to Google the DMDS, which is a substantial copy of HS's Desert Survival simulation, as well as material for the Facilitator Guide, which was derived from HS's Leader's Guide.

135. In publishing the DMDS, Defendants removed HS's copyright notices from Desert Survival and replaced them with: "This content is from rework.withgoogle.com (the "Website") and may be used for non-commercial purposes in accordance with the terms of use set forth on the Website."

136. The Defendants also slightly altered the title from HS's original work, while continuing to use the term "Desert Survival" in the title of the DMDS. HS owns common law trademark rights in "Desert Survival," which it has used for 45 years in conjunction with the *Desert Survival Situation*, the *Desert Survival Problem*, the *Desert Survival Situation Leader's Guide*, and with other materials ancillary thereto.

137. HS has an application currently pending before the U.S. Patent and Trademark Office for the mark "DESERT SURVIVAL," citing its use dating back to 1974.

138. By their actions, Defendants have falsely designated the origin of their goods, i.e., the Workbook and Facilitator Guide, in a manner likely to cause confusion or mistake as to the source of Desert Survival, i.e., whether HS's Desert Survival is, in fact, produced by and original to Google.

139. Defendants' acts of infringement have been willful, intentional, and purposeful, in disregard of, and/or indifferent to the rights of HS.

140. The natural, probable, and foreseeable result of Defendants' wrongful conduct has been and will continue to be to deprive HS of substantial economic benefits, to deprive HS of goodwill, and to injure HS's relations with present and prospective customers.

141. HS has lost and will continue to lose substantial revenues and will sustain damages resulting from Defendants' wrongful and deceptive conduct. Defendants' wrongful conduct has also deprived and will continue to deprive HS of opportunities for expanding its goodwill.

142. As a direct and proximate result of the acts of Defendants alleged above, HS has already suffered irreparable damage and sustained lost profits, and Defendants have profited. HS has no adequate remedy at law to redress all of the injuries that Defendants have caused and intends to cause by its conduct.

143. HS is entitled to an injunction restraining Defendants, along with Defendants' officers, agents, servants, employees, and attorneys, and all other persons who are in active concert or participation with any of them, from engaging in any further such acts in violation of the Lanham Act.

144. HS is further entitled to recover from Defendants all damages available pursuant to the Lanham Act, 15 U.S.C. § 1051 *et seq.* for Defendants'

wrongful conduct. At present, the amount of such damages cannot be fully ascertained by HS.

145. HS is further entitled to an award of its costs and expenses, including reasonable attorney fees, as a result of Defendants' knowing, willful, and intentional misconduct.

146. HS is further entitled to such other and further relief as the Court deems just.

147. Defendants are liable to HS for false designation of origin, in violation of 15 U.S.C. § 1125(a).

COUNT VI

FALSE ADVERTISING

(15 U.S.C. § 1125(a))

(Against Defendants Underwood and Catalyst)

148. HS repeats and realleges all paragraphs of this Complaint as if fully restated herein.

149. By their acts and conduct alleged in this Complaint, Defendants Catalyst and Underwood have, in connection with their consulting and training services, used in interstate commerce false and/or misleading descriptions of fact regarding Underwood's claimed accreditation by HS in HS materials.

150. Defendants' false and misleading statements of fact were made in commercial advertising or promotion of their goods and services in Underwood's biography posted on Catalyst's internet website.

151. Defendants' false and misleading statements of fact misrepresented Underwood's professional credentials, i.e., that he is certified and/or approved by HS to work with and use HS materials in providing consulting and training services.

152. Defendants' false and misleading statements actually deceive or tend to deceive a substantial portion of the intended audience, namely consumers and potential consumers of consulting and/or training services relating to organizations' culture and practices.

153. Defendants' false and misleading statements are material in that they will likely influence the deceived consumer's purchasing decisions.

154. HS has been and continues to be injured in its business by Defendants' false and misleading statements regarding Underwood's credentials and his claimed accreditation in the use of HS materials.

155. HS has been injured in ways that are not adequately compensable at law, and will continue to be injured in such manner unless Defendants are enjoined from continuing to make the false and misleading statements complained of.

156. Additionally, HS has been economically harmed in its business as a result of Defendants' false and misleading statements and is entitled to damages in an amount to be proven at trial.

157. Defendants Underwood and Catalyst are liable to HS for false advertising in violation of the Lanham Trademark Act.

COUNT VII

DECEPTIVE TRADE PRACTICES **(Michigan Consumer Protection Act -- MCL § 445.901, *et seq.*)** **(Against All Defendants)**

158. HS repeats and realleges all paragraphs of this Complaint as if fully restated herein.

159. Defendants' conduct, as alleged hereinabove, has caused a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certifications of their goods or services.

160. Through their conduct aforesaid, Defendants have represented that their goods or services have sponsorship, approval, or characteristics that they do not have.

161. As a direct result of Defendants' violations, as aforesaid, HS has suffered substantial harm including, but not limited to, irreparable harm that cannot be adequately compensated at law, and which cannot be remedied unless

Defendants are enjoined from use of HS's marks or any confusingly similar variation thereof.

162. HS is entitled to an injunction restraining Defendants, along with Defendants' officers, agents, servants, employees, and attorneys, and all other persons who are in active concert or participation with any of them, from engaging in any further such acts in violation of the Michigan Consumer Protection Act.

163. HS is further entitled to recover from Defendants all actual and/or statutory damages available pursuant to the Michigan Consumer Protection, MCL 445.911 for Defendants' wrongful conduct. At present, the amount of such damages cannot be fully ascertained by HS.

164. HS is further entitled to an award of its costs and expenses, including reasonable attorney fees, resulting from Defendants' violations of the Michigan Consumer Protection Act.

165. HS is further entitled to such other and further relief as the Court deems just.

166. Defendants are liable to HS for deceptive trade practices in violation of the Michigan Consumer Protection Act, MCL 445.901 *et seq.*

COUNT VIII

UNFAIR COMPETITION
(Against All Defendants)

167. HS repeats and realleges all paragraphs of this Complaint as if fully restated herein.

168. At all times relevant hereto, HS has been the owner of common law rights in its “Desert Survival” trademark.

169. Through continued and extensive use and advertising, the “Desert Survival” mark has become exclusively identified with HS.

170. Defendants have wrongfully used the “Desert Survival” mark and/or colorable imitations thereof, in commerce, in connection with the sale, offering for sale, distribution, or advertising of their goods and services, in violation of HS’s rights under the Michigan law of unfair competition.

171. Defendants’ conduct aforesaid is likely to cause confusion, or to cause mistake, or to deceive consumers and the public as to the source or origin of Defendants’ goods or services, or as to their affiliation with or endorsement, approval, or sponsorship by HS.

172. Defendants’ violation of HS’s rights in its mark is willful, deliberate, fraudulent, and intentional, and was made with the knowledge that such violations would damage HS and the “Desert Survival” mark.

173. The natural, probable, and foreseeable result of Defendants’ wrongful conduct has been and will continue to be to deprive HS of substantial economic

benefits, to deprive HS of goodwill, and to injure HS's relations with present and prospective customers.

174. HS has lost and will continue to lose substantial revenues and will sustain damages resulting from Defendants' wrongful and deceptive conduct. Defendants' wrongful conduct has also deprived and will continue to deprive HS of opportunities for expanding its goodwill.

175. As a direct and proximate result of the acts of Defendants alleged above, HS has already suffered irreparable damage and sustained lost profits, and Defendants have profited. HS has no adequate remedy at law to redress all of the injuries that Defendants have caused and intend to cause by their conduct.

176. HS is entitled to an injunction restraining Defendants, along with Defendants' officers, agents, servants, employees, and attorneys, and all other persons who are in active concert or participation with any of them, from engaging in any further such acts in violation of the Michigan common law of unfair competition.

177. HS is further entitled to recover from Defendants all damages available, of every type and nature, for violations of the Michigan common law of unfair competition. At present, the amount of such damages cannot be fully ascertained by HS.

178. HS is further entitled to an award of its costs and expenses, including reasonable attorney fees, as a result of Defendants' knowing, willful, and intentional misconduct.

179. HS is further entitled to such other and further relief as the Court deems just.

180. Defendants are liable to HS for unfair competition in violation of Michigan common law.

VI. Demand for Relief

WHEREFORE, HS respectfully requests that this Honorable Court enter judgment in favor of HS and against Defendants, and award the relief requested as to each Count of the Complaint, as follows:

(a) Determining that Defendants have (i) infringed HS's copyrights in violation of the U.S. Copyright Act, 17 U.S.C. § 101 *et seq.*; (ii) engaged in contributory copyright infringement; (iii) engaged in vicarious copyright infringement (solely as to Defendant Underwood); (iv) violated the Digital Millennium Copyright Act, 17 U.S.C. § 1202; (v) wrongfully engaged in false designation of the origin of their goods and services, in violation of 15 U.S.C. § 1125(a); (vi) wrongfully engaged in false advertising in violation of 15 U.S.C. § 1125(a) (solely as to Defendants Underwood and Catalyst); (vii) violated the

Michigan Consumer Protection Act, MCL 445.901 *et seq.*; and (viii) violated the Michigan common law of unfair competition;

(b) Determining that HS has been damaged by Defendants' aforesaid violations and is likely to continue to be damaged in the absence of an injunction;

(c) Determining that Defendants are liable to HS for the aforesaid violations;

(d) Enjoining Defendants, their partners, directors, officers, agents, servants, employees, and all other persons in active concert or privity or in participation with any of the above, from infringing the HS copyrighted works related to Desert Survival, including the Leader's Guide, and Project Planning, including the PPS Leader's Guide, as cited in this Complaint; and from using HS's "Desert Survival" mark or any confusingly similar or colorable imitation thereof, in such a way as to be likely to cause confusion, mistake, or to deceive as to the source of Defendants' goods or services, or the affiliation, connection or association of Defendants with HS, or as to the HS's sponsorship, endorsement, or approval of Defendants' goods, services, or commercial activities;

(e) Requiring Defendants to pay HS all damages of any kind and nature, including, but not limited to, actual, statutory, treble, consequential, special, enhanced, exemplary, and punitive damages as may be available for liability as to any of the Counts of this Complaint, in an amount to be adjudicated at trial;

(f) Requiring Defendants to pay HS's costs and expenses, including its reasonable attorney fees, as may be available pursuant to statute or common law as to liability under any or all Counts of this Complaint;

(g) Granting HS such other and further relief as this Honorable Court deems just.

JURY DEMAND

Plaintiff Human Synergistics, Inc. demands a trial by jury as to all issues in this action triable to a jury.

Dated: November 1, 2018

JAFFE RAITT HEUER & WEISS, PC

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