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14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 MOVEON.ORG CIVIC ACTION and BRAVE)
NEW FILMS, LLC,)
18)
Plaintiffs,)
19)
v.)
20)
VIACOM INTERNATIONAL, INC.,)
21)
Defendant.)
22)

COMPLAINT
(Demand for Jury Trial)

23 1. This is a civil action seeking injunctive relief and damages for misrepresentation of
24 copyright infringement under the Digital Millennium Copyright Act (“DMCA”); and for
25 declaratory relief.

26 2. This case arises out of Defendant’s baseless assertion that Plaintiffs’ video, “Stop the
27 Falsiness,” infringes copyrights owned or controlled by Defendant. This assertion is false, but has
28

1 nonetheless resulted in the removal of Plaintiffs' video from the popular Internet media website,
2 YouTube.

3 **PARTIES**

4 3. Plaintiff MoveOn.org Civic Action is a 501(c)(4) nonprofit corporation headquartered
5 in Berkeley, California, and dedicated to education and advocacy on important issues of national
6 concern.

7 4. Plaintiff Brave New Films, LLC is a limited liability corporation, with its principal
8 place of business in Culver City, California.

9 5. On information and belief, Defendant Viacom International is a Delaware corporation
10 with its principal place of business in New York, New York.

11 **JURISDICTION AND VENUE**

12 6. This Court has subject matter jurisdiction over this claim pursuant to the Copyright
13 Act (17 U.S.C. §§ 101 et seq.), 28 U.S.C. §§ 1331 and 1338, and the Declaratory Judgment Act (28
14 U.S.C. § 2291).

15 7. Plaintiffs are informed, believe and thereon allege that Defendant has sufficient
16 contacts with this district generally and, in particular, with the events herein alleged, that it is
17 subject to the exercise of jurisdiction of this court and that venue is proper in this judicial district
18 pursuant to 28 U.S.C. § 1391.

19 8. Plaintiffs are informed, believe and thereon allege that, based on the places of
20 businesses of the Plaintiffs and Defendant, specific factual allegations herein and/or on the national
21 reach of Defendant, a substantial part of the events giving rise to the claims herein alleged occurred
22 in this district and that Defendant and/or an agent of Defendant may be found in this district.

23 **INTRADISTRICT ASSIGNMENT**

24 9. Plaintiffs are informed, believe and thereon allege that a substantial part of the events
25 that give rise to the claims herein occurred in the County of Santa Clara, California.

26 **FACTUAL ALLEGATIONS**

27 10. MoveOn.org Civic Action ("MoveOn") is part of MoveOn.org, a family of
28 organizations devoted to getting more Americans involved in the political process.

1 11. Brave New Films, LLC (“BNF”) is a limited liability corporation that produces and
2 distributes films, blogs, television shows and short videos that challenge corporate and political
3 misbehavior. Its co-founder, Robert Greenwald, is well-known for his documentaries “Outfoxed”
4 (about the Fox News Network) and “Uncovered” (examining events leading to America’s 2003
5 invasion of Iraq). Other titles produced and/or distributed by Brave New Films include “Walmart:
6 The High Cost of Low Price,” which documents and criticizes the business practices of one of the
7 world’s largest retailers.

8 12. MoveOn and BNF, working with the assistance of several volunteers, developed and
9 produced a video lampooning the popular Comedy Central television series, “The Colbert Report.”
10 An exercise in humor, the video sends up both “The Colbert Report,” and MoveOn’s own
11 reputation for earnest political activism. The video is entitled “Stop the Falsiness,” a play on the
12 term “truthiness,” frequently used by Stephen Colbert, the host of “The Colbert Report.”

13 13. Defendant Viacom International, Inc. (“Viacom”) is the corporate parent of Comedy
14 Partners, which produces the Colbert Report and owns the Comedy Central cable network.
15 Plaintiffs are informed and believe, and thereon allege, that Viacom owns or controls the
16 copyrights in “The Colbert Report.”

17 14. On August 4, 2006, BNF uploaded “Stop the Falsiness” to a popular website on the
18 Internet known as “YouTube” (www.youtube.com). YouTube is a video-sharing site where
19 millions of Internet users post videos and make them available to others for viewing. These videos
20 range from traditional home videos of personal events, to news reports, to advertisements and
21 television programs.

22 15. On August 9, 2006, Richard Dahm, producer of the Colbert Report, was provided with
23 a link to “Stop the Falsiness” and was informed that MoveOn would be publicizing the video to
24 hundreds of thousands of MoveOn members.

25 16. Plaintiffs are informed and believe, and thereon allege, that on or about March 13,
26 2007, Viacom or its representative delivered a takedown notice to YouTube pursuant to the Digital
27 Millennium Copyright Act (DMCA), 17 U.S.C. § 512(c), asserting under penalty of perjury that
28 “Stop the Falsiness” infringed copyrights owned or controlled by Viacom.

1 17. On or about March 13, 2007, acting pursuant to the takedown notice delivered by
2 Viacom, YouTube blocked all public access to the “Stop the Falsiness” video, substituting on the
3 relevant webpage (<http://www.youtube.com/watch?v=sNHqX27hlz8>) a notice stating that “This
4 video is no longer available due to a copyright claim by Viacom International Inc.”

5 **COUNT I: 17 U.S.C. 512(F) MISREPRESENTATION**

6 18. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding
7 paragraphs of this Complaint.

8 19. Upon information and belief, the use in “Stop the Falsiness” of copyrighted material
9 related to “The Colbert Report” is a self-evident fair use and therefore non-infringing under 17
10 U.S.C. § 107.

11 20. Upon information and belief, Viacom knew or should have known that “Stop the
12 Falsiness” did not infringe any of its copyrights on the date its representative sent its DMCA
13 complaint to YouTube.

14 21. Accordingly, Viacom violated 17 U.S.C. § 512(f) by knowingly materially
15 misrepresenting that “Stop the Falsiness” infringed its copyrights.

16 22. As a direct and proximate result of Viacom’s actions, Plaintiffs have been injured
17 substantially and irreparably. Such injuries include but are not limited to harm to their free speech
18 rights under the First Amendment, and the expenses associated with responding to Viacom’s
19 complaint and vindicating their free speech rights.

20 **COUNT II: DECLARATORY RELIEF OF NON-INFRINGEMENT**

21 23. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding
22 paragraphs of this complaint.

23 24. There is a real and actual controversy between Plaintiffs and Defendant regarding
24 whether “Stop the Falsiness” constitutes infringement of a copyright Defendant lawfully owns.

25 25. Plaintiffs contend that, consistent with the Copyright Act of the United States of
26 America, including those laws prohibiting direct, contributory or vicarious infringement, laws
27 protecting fair use and the First Amendment to the United States Constitution, and judicial
28 decisions construing such laws, doctrines, and provisions, the creation and posting of “Stop the

1 Falsiness” by Plaintiffs was and is lawful and non-infringing.

2 26. Wherefore, Plaintiffs request that the Court determine and adjudge that each and every
3 one of the above-stated propositions states the law applicable to the facts involved in this action.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray for judgment as follows:

- 6 1. A declaratory judgment that “Stop the Falsiness” does not infringe any copyright
7 that Defendant lawfully owns;
- 8 2. Injunctive relief restraining the Defendant, its agents, servants, employees,
9 successors and assigns, and all others in concert and privity therewith, from bringing
10 any lawsuit, threatening legal action, or delivering DMCA takedown allegations in
11 connection with “Stop the Falsiness,” including but not limited to its publication,
12 distribution, performance, display, licensing, or the posting to or linking from any
13 website;
- 14 3. Damages according to proof;
- 15 4. Attorneys fees pursuant to 17 U.S.C. § 512(f), other portions of the Copyright Act
16 including Section 505, on a Private Attorney General basis, or otherwise as allowed
17 by law;
- 18 6. Plaintiffs’ costs and disbursements; and
- 19 7. Such other and further relief as the Court shall find just and proper.

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1 Plaintiffs hereby request a jury trial for all issues triable by jury including, but not limited
2 to, those issues and claims set forth in any amended complaint or consolidated action.

3
4 DATED: March 21, 2007

5 By _____
6 Fred von Lohmann, Esq. (SBN 192657)
7 Jason M. Schultz, Esq. (SBN 212600)
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15 DATED: March 21, 2007

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