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of Attorneys for Plaintiff  
Tomson Burnham, LLC

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

TOMSON BURNHAM, LLC, an  
Oregon Limited Liability Company,

Plaintiff,

v.

RON LEE and SMART PEOPLE REAL  
ESTATE, INC., an Oregon Business  
Corporation,

Defendants.

CIVIL NO. 10-6392-TC

**COMPLAINT;  
EXHIBITS 1-6**

Copyright Infringement

DEMAND FOR JURY TRIAL

Tomson Burnham, LLC (“Plaintiff” / “Tomson Burnham”), complains  
against Ron Lee, an individual, and Smart People Real Estate, Inc., an  
Oregon Business Corporation (collectively “Defendants”) as follows:

## **NATURE OF ACTION**

1.

This is an action for copyright infringement, 17 U.S.C. § 501.

## **JURISDICTION AND VENUE**

2.

This Court has original subject matter jurisdiction over this copyright infringement action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

3.

The United States District Court for the District of Oregon is an appropriate venue, pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events giving rise to the claim for relief are situated in Marion County, Oregon.

4.

The United States District Court for the District of Oregon is an appropriate venue, pursuant to 28 U.S.C. § 1391(c), because each of the Defendants is subject to personal jurisdiction in Oregon.

5.

The United States District Court for the District of Oregon is an appropriate venue, pursuant to 28 U.S.C. § 1400(a), because the Defendants are subject to personal jurisdiction in Oregon.

## **PARTIES**

6.

Tomson Burnham is, and has been at all relevant times, an Oregon Limited Liability Company, with its principal place of business in Marion County, Oregon.

7.

Tomson Burnham is, and has been at all relevant times, in good standing with the Oregon Secretary of State.

8.

Defendant, Ron Lee, is a resident of the State of Oregon and regularly conducts business in Marion County, Oregon.

9.

Defendant, Smart People Real Estate, Inc., is an Oregon Business Corporation, registered as of October, 7, 2010 with the Oregon Secretary of State, and claims to conduct business in Marion County, Oregon.

10.

Plaintiff and Defendants are both in the business of marketing and selling real estate in the State of Oregon, targeting many of the same customers.

## **FACTS**

11.

Tomson Burnham is the owner of the copyright of the original work titled, "Tomson Burnham Website" ("the Work") which has been filed with the United States Copyright Office. Copy of the Work, attached as Exhibit 1. Filing receipt attached as Exhibit 2.

12.

At all times relevant the Work comprised an original work of authorship which was published and used in commerce by Plaintiff in Plaintiff's marketing materials with a focus on the neighborhoods of Salem, Oregon.

13.

Plaintiff regularly markets its services through the internet website [www.tomsonburnham.com](http://www.tomsonburnham.com) with a principal target of doing business in the State of Oregon.

14.

Defendants regularly publish and market their services through the internet web site [www.salemorrealstate.com](http://www.salemorrealstate.com) and [www.smartpeoplerealestate.co](http://www.smartpeoplerealestate.co) with a principal target of doing business in the State of Oregon.

15.

Defendants use the domains [www.salemorrealestate.com](http://www.salemorrealestate.com) and [www.smartpeoplerealestate.co](http://www.smartpeoplerealestate.co) (“Defendants’ domains”) to both copy the Work and distribute the Work in violation of Plaintiff’s copyrights.

16.

Defendants use Defendants’ domains and the unauthorized use of the Work to solicit customers and collect contacts, leads and other information for potential sales.

17.

Defendants willfully copied the Work without authorization.

18.

At least as early as October 1, 2010, Defendants displayed an unauthorized reproduction of the Work on Defendants web sites.

19.

Defendants copied, among other things, a portion of the Work captioned Salem Oregon homes in Creekside. Exhibit 3.

20.

Defendants copied, among other things, a portion of the Work captioned Salem Oregon real estate in Chinook Estates. Exhibit 4.

21.

Defendants copied, among other things, a portion of the Work captioned Salem Oregon real estate in Illahe Hills. Exhibit 5.

22.

Defendants copied, among other things, a portion of the Work captioned Salem Oregon real estate in Cambridge. Exhibit 6.

23.

Defendants have made a pattern and practice of copying the Work of both Plaintiff and others and the presentation of the copied Work as Defendants' own work.

24.

Defendants have expressly admitted to collecting material for Defendants' marketing and web pages by going to sources such as [www.google.com](http://www.google.com) and collecting images in willful disregard for the copyright of others.

25.

Defendants, without authorization, displayed Plaintiff's images on Defendants' websites and presented Plaintiff's images as their own through direct linking. This was expressly demonstrated by Plaintiff's ability to control the images shown on Defendants' websites by changing the images

on Plaintiff's website, as can be seen in Exhibit 4. (Note the photo of a male in bed shown on Defendants website as opposed to the proper image of a home.)

26.

Defendants' copying of the Work was with the intent to present the Work as the Defendants' work and to use the Work in the marketing and promotion of Defendants' services in direct competition with the Plaintiff.

27.

As of November 18, 2010, after a notice from Plaintiff, Defendant continues to copy, reproduce and distribute unauthorized reproductions and derivations of the Work on Defendants' web sites.

## **CLAIM ONE**

### **COPYRIGHT INFRINGEMENT**

28.

Tomson Burnham repeats and realleges the allegations set forth in Paragraphs 1 through 27 above.

29.

Tomson Burnham holds the exclusive right to reproduce the Work, pursuant to 17 U.S.C. § 106(1).

30.

Tomson Burnham holds the exclusive right to prepare derivative works based upon the Work, the exclusive right to distribute copies of the Work, and the exclusive right to publicly display the Work, pursuant to 17 U.S.C. § 106(2),(3),(5).

31.

Defendants reproduced the Work in derogation of Tomson Burnham's exclusive rights under 17 U.S.C. § 106(1).

32.

Defendants created unauthorized derivatives of the Work in derogation of Tomson Burnham's exclusive rights under 17 U.S.C. § 106(2).

33.

Defendants distributed, and continue to distribute, unauthorized reproductions and derivatives of the Work on Defendants' websites, in derogation of Tomson Burnham's exclusive rights under 17 U.S.C. § 106(3).

34.

Defendants publicly displayed, and continue to publicly display, an unauthorized reproduction and derivation of the Work on Defendants' websites, in derogation of Tomson Burnham's exclusive rights under 17 U.S.C. § 106(5).



35.

Defendants have willfully engaged in the copyright infringement of the Work and continue to do so after notice.

36.

Defendants' acts as alleged herein, and the ongoing direct results of those acts, have caused and will continue to cause irreparable harm to Tomson Burnham in an amount Tomson Burnham cannot ascertain, leaving Tomson Burnham with no adequate remedy at law.

37.

Unless Defendants are preliminarily and permanently enjoined from further infringement of the Work, Tomson Burnham will be irreparably harmed, and Tomson Burnham is thus entitled to preliminary and permanent injunctive relief against further infringement by the Defendants of the Work, pursuant to 17 U.S.C. § 502.

38.

### **DEMAND FOR JURY TRIAL**

Tomson Burnham requests a trial by jury pursuant to Fed. R. Civ. P.

38.

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**WHEREFORE**, Plaintiff prays for relief as follows:

1. Preliminarily and permanently enjoin and restrain the Defendants, and the Defendants' officers, agents, servants, employees, attorneys, parents, subsidiaries, related companies, partners and all persons acting for, by, with, through, or under the Defendants, from directly or indirectly infringing the Work by reproducing the Work, preparing derivative works based on the Work, distributing the Work to the public, and/or displaying the Work, or ordering, directing, participating in, or assisting in any such activity;
2. Direct the Defendants to preserve, retain, and deliver to Tomson Burnham in hard copies or electronic copies of:
  - a. All documentation relating in any way to the Defendants' use of the Work, in any form, including, without limitation, all such evidence and documentation relating to the Website; and
  - b. All documentation relating to the names and addresses (whether electronic mail addresses or otherwise) of any person with whom the Defendants have communicated as a result of or regarding the Defendants' use of the Work;

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3. Direct Defendants, the current domain registrar and any successor domain name registrar for Defendants' domains to lock the domains and transfer control of the domains to Tomson Burnham;
4. Preliminarily and permanently enjoin and restrain the Defendants, and the Defendants' officers, agents, servants, employees, attorneys, parents, subsidiaries, related companies, partners and all persons acting for, by, with, through, or under the Defendants, from directly or indirectly contacting any party who has had any contact with Defendants through Defendants' domains or as a result of or through Defendants' materials which violate Plaintiff's copyright in the Work;
5. Award Tomson Burnham its actual damages, but not less than the statutory damages for the willful infringement of the Work, pursuant to 17 U.S.C. § 504(c) in the sum of \$150,000.00;
6. Award Tomson Burnham costs, disbursements, and attorneys' fees incurred by Tomson Burnham in bringing this action, pursuant to 17 U.S.C. § 505;

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7. Award Tomson Burnham pre and post-judgment interest; and
8. For such other relief as this Court deems fair and equitable.

Dated this 19<sup>th</sup> day of November, 2010.

CROWELL/ING, LLP



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