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10 Attorneys for Plaintiff,  
11 PHOTOCRAZY, INC.

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

PETER H. WOLF, an individual,  
Plaintiff,

vs.

CAPSTONE PHOTOGRAPHY, INC.,  
a Connecticut corporation, MICHAEL  
SKELPS, an individual, and DOES 1-  
10, inclusive

Defendants.

CASE NO. CV 13-9573 CAS (PJW<sub>x</sub>)

**FIRST AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

Plaintiff Peter H. Wolf hereby pleads its first amended claim for Patent Infringement against Defendants Capstone Photography, Inc. and Michael Skelps, as follows:

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## **THE PARTIES**

1  
2 1. Plaintiff Peter H. Wolf (“Plaintiff” or “Wolf”) is an individual residing  
3 in Thousand Oaks, California.

4 2. Plaintiff is informed and believes, and based thereon alleges that  
5 Defendant Capstone Photography, Inc. is a Connecticut corporation, with a  
6 business address of 6 Way Road, Suite 220, Middlefield, Connecticut 06455  
7 (“Capstone” or “Defendant”).

8 3. Plaintiff is informed and believes, and based thereon alleges that  
9 Defendant Michael Skelps is an individual, the president of defendant Capstone,  
10 and resides in Middlefield, Connecticut.

11 4. Plaintiff is informed and believes, and based thereon alleges that each  
12 of the fictitiously-named defendants is in some manner responsible, liable and/or  
13 obligated to Plaintiff in connection with the acts alleged herein (“Defendants”).

14 5. Plaintiff is informed and believes, and based thereon alleges that at all  
15 times mentioned herein, each of the Defendants was the agent, servant,  
16 representative, employee, partner, and/or controlling person of the other Defendants  
17 named herein, and in doing the acts herein alleged were acting as the agents for  
18 each other.

## **JURISDICTION AND VENUE**

19  
20 6. This is a complaint for patent infringement arising under the patent  
21 laws of the United States, Title 35 United States Code, particularly §§ 271 and 281.  
22 The Court has jurisdiction over the parties and the subject matter of the action  
23 pursuant to 28 U.S.C. § 1338(a).

24 7. Venue is proper in this judicial district under Title 28 United States  
25 Code §§ 1391(b) and (c) and 1400(b) because a substantial part of the events giving  
26 rise to the claims occurred in this judicial district. Also, Defendants are subject to  
27 personal jurisdiction in this judicial district.

28 8. Defendants conduct business within this judicial district, including the

1 acts complained of herein. Defendants' website, www.capstonephoto.com, asserts  
 2 that Defendants have "the most extensive network of photographers in the country.  
 3 We are ready to serve your event no matter where in the US you are!" This  
 4 statement is just below a map that shows numerous locations in Southern California  
 5 where Defendants purportedly do business. On information and belief, Defendants  
 6 recently provided their services in this judicial district, at the "Dirty Girl Mud Run"  
 7 in Ventura, California, on November 2, 2013.

8 9. This Court has personal jurisdiction over Defendants because they  
 9 committed intentional acts aimed at California residents, harm was suffered in  
 10 California, and Defendants knew that harm was likely to be suffered in California.  
 11 Defendants knowingly caused an effect in this judicial district by willfully  
 12 infringing Plaintiff's patents.

### 13 FACTUAL ALLEGATIONS

14 10. Plaintiff Wolf is the President of a business located in Thousand Oaks,  
 15 California, called PhotoCrazy. For many years, PhotoCrazy has been and still is  
 16 engaged in the business of taking and providing event photographs for inspection,  
 17 selection, and distribution via a computer network. Plaintiff developed a number of  
 18 leading edge technologies for event photography and distribution.

19 11. Plaintiff is the owner of all rights and title to United States Patent Nos.  
 20 6,985,875 ('875 Patent), 7,047,214 ('214 Patent), and 7,870,035 ('035 Patent),  
 21 (collectively, the "Patents in Suit"), which pertain generally to the method of  
 22 inspection, selection, distribution and advertising of event photographs.

23 12. Plaintiff is informed and believes that Defendants are aware of the  
 24 Patents-in-Suit, which all received extensive coverage on various Internet forums,  
 25 especially in 2006 when the '875 and '214 Patents issued. Defendant Capstone was  
 26 founded in 2005, and its president Michael Skelps could not have missed the  
 27 coverage as he sought to grow the business. In 2008, Plaintiff called Capstone's  
 28

1 president, Michael Skelps, to offer him a license to the for the '875 and '214 Patents,  
 2 and followed up with an email again offering him a license, but Michael Skelps  
 3 never contacted plaintiff. Plaintiff is informed and believes that despite his  
 4 knowledge of the '214 and '875 patents, Mr. Skelps chose to continue his infringing  
 5 activities. After the '035 Patent issued in 2011, Plaintiff left a voicemail for Mike  
 6 Skelps, asking him to call. Mr. Skelps failed to return the call. Moreover, Capstone  
 7 is now aware of the Patents-in-Suit via this complaint.

8 13. Plaintiff is informed and believes that Capstone's president, Michael  
 9 Skelps, engages in, directs, participates, approves, encourages, and induces acts that  
 10 constitute infringement of the Patents-in-Suit, and continues to do so.

11 14. Plaintiff is informed and believes and based thereon alleges that  
 12 Defendants are engaged in the business of providing event photographs for  
 13 inspection, selection and distribution via the Internet through Defendants' website  
 14 located at [www.capstonephoto.com](http://www.capstonephoto.com). Copies of the relevant pages of Defendants'  
 15 website showing the process are attached as Exhibit D. Plaintiff is further informed  
 16 and believes and thereon alleges, that Defendants are offering to provide selected  
 17 digital photographs with visual advertiser indicia within the photograph field to  
 18 race participants, as shown on Defendants' website at  
 19 [capstonephoto.com/race\\_directorsv3](http://capstonephoto.com/race_directorsv3), a copy of which is attached as Exhibit E.

20 15. Plaintiff is informed and believes and based thereon alleges that third  
 21 parties that access and use Defendants' website directly infringe and/or partially  
 22 infringe certain claims of the Patents-in-Suit.

### 23 **FIRST CAUSE OF ACTION**

24 (Infringement of the '214 Patent)

25 16. Plaintiff incorporates by reference the allegations contained in  
 26 paragraphs 1 thru 15 as if fully set forth herein.

27 17. Plaintiff is the owner of the '214 Patent for a process for providing  
 28 event photographs for inspection, selection and distribution via a computer

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1 network, issued on May 16, 2006. This patent is presumed valid and enforceable  
 2 under 35 U.S.C. § 282. A copy of the above described '214 patent is attached to  
 3 this Complaint as Exhibit A.

4 18. Plaintiff is the owner of the '214 patent and possesses the sole right  
 5 and obligation to assert and enforce infringement claims against alleged infringers.

6 19. The '214 patent, in general, relates to a process for providing event  
 7 photographs for inspection, selection and distribution via a website on the internet,  
 8 which generally includes the steps of taking event photographs, associating  
 9 identifying data with each photograph taken, informing the event participants of the  
 10 identifying data, transferring the photographs to a computer network server, and  
 11 permitting access to the server for searching of a particular photograph using the  
 12 identifying data

13 20. Defendants' past, present and future business of providing event  
 14 photographs for inspection, selection and distribution via a computer network as  
 15 described above, constitutes an infringement of Plaintiff's '214 patent under the  
 16 U.S. patent laws. 35 U.S.C. § 271(a).

17 21. Plaintiff is informed and believes and based thereon alleges that  
 18 Defendants' acts of infringement have been willful.

19 22. Plaintiff is entitled to a full range of injunctive and monetary relief and  
 20 remedies under the U.S. patent laws. 35 U.S.C. § 281 et seq.

## 21 **SECOND CAUSE OF ACTION**

22 (Infringement of the '875 Patent)

23 23. Plaintiff incorporates by reference the allegations contained in  
 24 paragraphs 1 thru 22 as if fully set forth herein.

25 24. Plaintiff is the owner of the '875 Patent for providing photographs of a  
 26 sporting event for inspection, selection, and distribution via a computer network,  
 27 issued on January 10, 2006. This patent is presumed valid and enforceable under  
 28 35 U.S.C. § 282. A copy of the '875 Patent is attached hereto as Exhibit B.

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25. Plaintiff is the owner of the '875 Patent and possesses the sole right and obligation to assert and enforce infringement claims against alleged infringers.

26. Defendants' past, present and future business of providing event photographs for inspection, selection and distribution via a computer network as described above, constitutes an infringement of Plaintiff's '875 Patent under the U.S. patent laws. 35 U.S.C. § 271(a). Alternatively, to the extent that any of the steps of the '875 Patent claims are performed by parties other than Defendants, Plaintiff is informed and believes that Defendants instruct and encourage those third parties to perform those steps, as shown on Defendants' website, resulting in contributory and/or induced infringement of the '875 Patent. Plaintiff is informed and believes that Defendants knew of the '875 Patent, and further knew that its actions would contribute to and/or induce others to perform the steps of the '875 Patent, and those steps were actually performed.

27. Plaintiff is informed and believes and based thereon alleges that Defendants' acts of infringement have been willful.

28. Plaintiff is entitled to a full range of injunctive and monetary relief and remedies under the U.S. patent laws. 35 U.S.C. § 281 et seq.

### **THIRD CAUSE OF ACTION**

(Infringement of the '035 Patent)

29. Plaintiff incorporates by reference the allegations contained in paragraphs 1 thru 28 as if fully set forth herein.

30. Plaintiff is the owner of the '035 Patent for a method of advertising and distribution for event photographs, issued on January 11, 2011. This patent is presumed valid and enforceable under 35 U.S.C. § 282. A copy of the above described '035 patent is attached to this Complaint as Exhibit C.

31. Plaintiff is the owner of the '035 patent and possesses the sole right and obligation to assert and enforce infringement claims against alleged infringers.

32. Defendants' past, present and future business of offering to provide

1 selected digital photographs with visual advertiser indicia within the photograph  
2 field to event participants and others as described above, constitutes an  
3 infringement of Plaintiff's '035 patent under the U.S. patent laws. 35 U.S.C.  
4 § 271(a).

5 33. Alternatively, to the extent that any of the steps of the '035 Patent  
6 claims are performed by parties other than Defendants, Plaintiff is informed and  
7 believes that Defendants aid, abet, employ, instruct, and/or encourage those third  
8 parties to perform those steps, resulting in contributory and/or induced infringement  
9 of the '035 Patent. In particular, Defendants' website shows that Defendants  
10 offered race photos to participants that were automatically overlaid with the race  
11 branding for the Scranton, Pennsylvania Dirty Girl Mud Run on May 4-5, 2013  
12 (Exhibit E). Plaintiff is informed and believes that Defendants used a third party,  
13 Pic2Go, to implement some of the steps of the '035 Patent claims, as shown on the  
14 website pic2go.com, attached hereto as Exhibit F, which shows the branded photos  
15 of the Dirty Girl participants, states that Capstone used the system to deliver those  
16 photos, and also describes how the Pic2Go system operates with the photographer  
17 (Capstone) to deliver such photos to the participants. Another website,  
18 mudracepics.com/scranton, attached as Exhibit G, shows that Capstone presented  
19 the Pic2Go system for Dirty Girl race participants and others to search for race  
20 photos by bib number, which then allowed them to access and order such photos.

21 34. Plaintiff is informed and believes that Defendants knew of the '035  
22 Patent, and further knew that its actions would contribute to and/or induce others to  
23 perform the steps of the '035 Patent, and those steps were actually performed.

24 35. Plaintiff is informed and believes and based thereon alleges that  
25 Defendants' acts of infringement have been willful.

26 36. Plaintiff is entitled to a full range of injunctive and monetary relief and  
27 remedies under the U.S. patent laws. 35 U.S.C. § 281 et seq.  
28



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Peter H. Wolf prays that this Court enter judgment as follows:

A. That Defendants be adjudged to have infringed each of the '214 Patent, '035 Patent, and '875 Patent;

B. That Defendants, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them, be preliminary and permanently restrained and enjoined from directly or indirectly infringing the '214 Patent, the '035 Patent, and the '875 Patent;

C. That Defendants account for damages to Plaintiff by virtue of Defendants' infringement, contributory and/or induced infringement of the '214 Patent, the '035 Patent, and the '875 Patent;

D. That judgment be entered against Defendants, jointly and severally, awarding Plaintiff all damages, in such amounts as are proved at trial, and in no event in an amount less than a reasonable royalty, resulting from Defendants' infringement, contributory and/or induced infringement of the '214 Patent, the '035 Patent, and the '875 Patent, pursuant to 35 U.S.C. § 284;

E. That Defendants be adjudged to have willfully and deliberately infringed, contributed to and/or induced infringement of the '214 Patent, the '035 Patent, and the '875 Patent;

F. That the present case be judged an exceptional case within the meaning of 35 U.S.C. § 285 and that Plaintiff be awarded its reasonable attorneys' fees and costs pursuant thereto;

G. That Plaintiff be awarded damages in an amount equal to three times the amount of damages found or accessed, to compensate Plaintiff for the willful and deliberate acts of infringement by Defendants, pursuant to 35 U.S.C. § 284; and



1 H. That Plaintiff have such other and further relief as the Court may deem  
2 just and proper.

3  
4 Respectfully submitted,

5  
6 CISLO & THOMAS LLP

7  
8 Dated: July 14, 2014

9 By: /s/ Peter S. Veregge  
10 Daniel M. Cislo  
11 Peter S. Veregge

12 Attorneys for Plaintiff,  
13 PETER H. WOLF

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**DEMAND FOR JURY TRIAL**

Plaintiff Peter H. Wolf hereby demands a trial by jury.

Respectfully submitted,

CISLO & THOMAS LLP

Dated: July 14, 2014

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Peter S. Veregge

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