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SEP 2 2006
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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

SACV06-873 DOC(ANx)

11 Medicine Online Inc.)
12)
13 Plaintiff,)
14 vs.)
15 BidRx, LLC, and Does 1 through 50)
16 Inclusive.)
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Case No.:
**COMPLAINT TO ENJOIN
TRADEMARK INFRINGEMENT,
FOR DAMAGES AND RELATED
CLAIMS, AND JURY DEMAND**

DOCKETED ON CM
SEP 26 2006
BY [Signature] 074

JURISDICTION AND VENUE

1. This is a suit for trademark infringement and arises under the trademark laws of the United States, namely, Title 15 of the United States Code and more particularly, 15 U.S.C. 1116-18, inclusive. This Court has jurisdiction under the provisions of 15 U.S.C. 1121 and 28 U.S.C. 1338
- (a.)

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2. This court has personal jurisdiction under California's Long Arm Statutes and the holding of Panasonic v. L.P. Toepen (CA 9th 1998) 141 F.3d 131. Venue is proper in this District under 28 U.S.C. 1391 (c) and California's Long Arm Statutes.

3. This Court further has in personam jurisdiction over each of the Defendants because, inter alia, Defendant (a) transacts business throughout the United States including this district; (b) sells, ships, and delivers substantial quantities of pharmaceutical drugs throughout the United States including this district; and (c) had substantial contacts with the United States and this district.

4. Venue as to the defendant also is proper in this judicial district pursuant to the provisions of Section 16750(a) and 17203 of the Business and Professions Code. The unlawful conduct undertaken pursuant to the combination and conspiracy alleged herein had and has a direct effect on business within the State of California, and the trade and commerce described below is carried on to a significant degree within the state of California.

PARTIES

5. Medicine Online, Inc. (hereinafter referred to as "Plaintiff") is now, and at all times hereafter-mentioned has been a Corporation organized under the laws of the state of California.

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- 6. Plaintiff is informed and believes, and on that basis alleges, that BidRx LLC (hereinafter referred to as "Defendant") is qualified to do business and is doing business in the State of California, County of Orange through offering its services via the world wide web.

- 7. The true names or capacities, whether individual, corporate, associate, or otherwise of defendants DOES 1 through 50, inclusive are unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff is informed and believes and on such information and belief alleges that each of the defendants sued herein as a DOE is legally responsible in some manner for the events and happenings referred to herein, and will ask leave of this Court to amend this complaint to insert their true names and capacities when the same becomes known to Plaintiff.

BACKGROUND FACTS

- 8. On or about December 2000, Plaintiff began using the trade name Bid for Rx, hereinafter referred to as the "Mark," to promote a service it was offering to the public on its Internet website www.medicineonline.com.

- 9. In the course of the past six years, Plaintiff has spent a substantial amount of time and considerable financial resources in developing a business plan, website and business connections based on the business theory of providing an Internet-based, reverse-auction bidding service. Via this service, registered pharmacies bid against each other to supply

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prescription drugs to participating patients and consumers at the lowest price. In this period Plaintiff has continuously used the Mark in association with its services and its business model.

10. Over the years Plaintiff has spent considerable resources in establishing the Mark in the minds of the customers as a source of receiving the best price on prescription drugs.
11. Plaintiff's website has referred to the Mark and proudly promoted the same for the past six years.
12. On information and belief, Plaintiff alleges that Defendant has recently begun to promote its business model under the mark **BidRx** on its website **www.BidRx.com**, which is an exact duplicate of the business model Plaintiff has been promoting for the past six years under their mark **Bid for Rx** on their websites **www.bidforrx.com** and **www.medicineonline.com**.
13. The services offered and products sold by Defendant through using the BidRx mark are offered to residents of California and are fulfilled by pharmacies in the state.
14. Defendant's website refers to and promotes pharmacies in California that are participating in the program which uses the mark BidRx.

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15. On information and belief Plaintiff alleges that a search for the phrase "BidRx" brings up all of Plaintiff's sites, together with a few which refer to Defendant.

16. The use by Defendant of the mark and logo BidRx on its services as offered via the world wide web is likely and certain to cause confusion and mistake and deception on the part of users and purchasers as to the origin of the services and goods involved.

17. Defendant is actively promoting its website on the Internet.

18. Users and purchasers are likely to select the services of Defendant and bid on prescription drugs thinking they are part of Plaintiff's services, resulting in a loss to Plaintiff and its partners who are all located in the State of California, County of Orange.

19. Plaintiff has no control over the quality of prescription drugs sold by Defendant, or the prices charged and services provided by Defendant, and therefore Plaintiff's goodwill in respect to its Mark is at the mercy of the Defendant.

20. The use by Defendant of the BidRx mark on the services it provides has caused confusion and mistake and deception on the part of users and purchasers as to the source of the goods and services offered, adversely impacting Plaintiff's business in California.

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21. The use by Defendant of the BidRx trademark has resulted in the dilution of the exclusive rights which the Plaintiff formerly enjoyed in connection with its trademarks in offering a reverse-auction bidding service for high quality prescription drugs, to the great detriment of Plaintiff.

22. The infringement by the Defendant of Plaintiff's trademark has been willful and deliberate, designed specifically to trade upon the enormous goodwill associated with Plaintiff's trademark established in the marketplace through years of expense and effort.

23. The goodwill of the Plaintiff's business under its trademarks is of enormous value, and the Plaintiff will suffer irreparable harm should Defendant's infringement be allowed to continue to the detriment of Plaintiff's trade reputation and goodwill.

24. Defendant's infringement will continue unless enjoined by this Court.

25. The natural, probable and foreseeable result of Defendant's wrongful conduct has been and will continue to be to deprive Plaintiff of the benefits of offering and selling Plaintiff's services and its other products, to deprive Plaintiff of goodwill, and to injure Plaintiff's relations with present and prospective customers.

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26. Plaintiff is informed and believes, and on that basis alleges, that it has lost and will continue to lose substantial revenues as a result of Defendant's wrongful conduct and Defendant's promotion of its website and infringing mark on the Internet. Defendant's wrongful conduct has also deprived and will continue to deprive Plaintiff of opportunities for expanding its goodwill.

27. Plaintiff is informed and believes, and on that basis alleges, that unless enjoined by this Court, Defendant intends to continue its course of conduct and to wrongfully use, infringe upon, sell and otherwise profit from Plaintiff's Mark. As a direct and proximate result of the acts of Defendant alleged above, Plaintiff has already suffered irreparable damage and has sustained lost profits. Plaintiff has no adequate remedy at law to redress all of the injuries that Defendant has caused and intends to cause by its conduct. Plaintiff will continue to suffer irreparable damage and sustain lost profits until Defendant's actions alleged above are enjoined by this court.

**FIRST CLAIM FOR RELIEF
(VIOLATION OF THE LANHAM ACT)**

28. Plaintiff realleges and incorporates herein the allegations of Paragraphs 1-27, inclusive.

29. Defendant is using the almost identical name and mark as the Mark owned by Plaintiff for selling services and products which mirror those of Plaintiff.

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- 30. There is a likelihood of confusion because (a) the names are almost identical; (b) the goods and services are identical; (c) there is actual confusion by consumers who might search for Plaintiff's services and be directed to Defendant's site.

- 31. At all times relevant herein, Defendants and each of them had the right and ability to supervise and/or control the infringing product of each other by refusing to permit the illegal use of the name BidRx in promoting services and product identical to those of Plaintiff and refused to do so.

- 32. By its actions alleged above, Defendant has infringed and will continue to infringe Plaintiff's trademark in and relating to the Mark by producing, distributing, and placing in the marketplace, its Internet services that use the name BidRx.

- 33. As a proximate result of such failure, Defendants have infringed Plaintiff's trademark rights.

- 34. Defendants and each of them derived and continue to derive substantial financial benefit from infringement of Plaintiff's trademarks in that among other things, Defendants have sold prescription drugs illegally using the name BidRx.

- 35. The foregoing acts of Defendant has been willful, intentional and purposeful, in conscious disregard of and with indifference to the rights of Plaintiff.

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36. As a direct and proximate result of Defendant's infringement of Plaintiff's trademark and exclusive rights under that Mark, Plaintiff's are entitled to damages, Defendant's profits, and cost of action pursuant to 15 U.S.C. §1117 for each infringement.
37. Alternatively Plaintiff is entitled to the maximum statutory damages in the amount of \$1,000,000 with respect each willful infringement. Plaintiff's are also entitled maximum statutory damages in the amount of \$100,000 per domain name infringement pursuant to 15 U.S.C 117 (d) due to BidRx's registering of BidRx.com.
38. Plaintiff is also attorneys' fees under 15 U.S.C 1117 (b.)
39. Plaintiff is also seeking an injunction to prevent Defendant from further damaging Plaintiff's goodwill and market share as Defendant's conduct is causing irreparable harm to Plaintiffs business and the injury cannot be fully compensated or measured in money. Plaintiff as no adequate remedy at law and pursuant to 15 U.S.C 1116 (d) is entitled to a preliminary injunction and permanent injunctions prohibiting further infringement of Plaintiff's Mark..

**SECOND CLAIM FOR RELIEF
(COMMON LAW TRADEMARK INFRINGEMENT)**

40. Plaintiff realleges and incorporates herein the allegations of Paragraphs 1-31, inclusive.

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41. This is an action for common law trademark infringement. This cause of action is separate and independent of the cause of action set forth in Count I, but is between the same parties and is based on the same operative facts as set forth in Count I. This Court has jurisdiction over this action under 28 U.S.C. 1332, as there is diversity of citizenship between the parties, and the amount in controversy exceeds the sum of Seventy Five Thousand Dollars (\$75,000.00) exclusive of interest and costs. This Court also has pendent jurisdiction over this Count II pursuant to 28 U.S.C. 1338(b). Venue is proper in this District under 28 U.S.C. 1391.

42. Plaintiff owns and uses the Mark in various forms and styles in connection with the process of a reverse auction for registered pharmacies to bid against each other to supply prescription drugs to participating patients and consumers at the lowest price, and the selling of prescription drugs by registered pharmacies in the State of California.

43. Plaintiff owns and enjoys common law rights in California and throughout the United States in and to the Mark in connection with selling prescription drugs to individuals through a reverse-auction bidding process.

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44. The Defendant's use of the trademark BidRx in connection with the promotion of a Website which purports to allow drug providers to bid to supply prescription drugs in the State of California and elsewhere throughout the United States, is likely to cause and has caused confusion as to the source of Defendant's products in that purchasers thereof will likely associate or have associated such products and services with and as originating with the Plaintiff, all to the detriment of the Plaintiff.

45. Defendant's infringement will continue unless enjoined by this Court.

**THIRD CLAIM FOR RELIEF
(FALSE DESIGNATION OF ORIGIN UNDER § 43(A) OF THE
LANHAM ACT)**

46. Plaintiff realleges and incorporates herein the allegations of Paragraphs 1-37, inclusive.

47. This is an action for false designation of origin and unfair competition pursuant to Section 43(a) of The Lanham Act, 15 U.S.C. § 1125(a.) This Court has jurisdiction under 15 U.S.C. § 1121, 15 U.S.C. § 1125(a) and 28 U.S.C. § 1338(a). This Court also has jurisdiction of the action under 28 U.S.C. § 1332, as there is diversity of citizenship between the parties, and the amount in controversy exceeds the sum of Seventy Five Thousand Dollars (\$75,000.00), exclusive of interest and costs. Venue is proper in this District under 28 U.S.C. § 1391.

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48. Defendant's use of the "BidRx" trademarks constitutes a false designation of origin which is likely to deceive and has deceived customers and prospective customers into believing that Defendant's services and products are connected to Plaintiff's.

49. Plaintiff has no control over the nature and quality of the expanded line of products and services offered and sold by Defendant. Any failure, neglect or default by Defendant in providing such products and/or services will reflect adversely on Plaintiff as the believed source of origin thereof, hampering efforts by Plaintiff to continue to protect its outstanding reputation for high quality and services all to the irreparable harm of the Plaintiff.

50. Defendant's false designation of origin will continue unless enjoined by this Court.

**FOURTH CLAIM FOR RELIEF
(TRADEMARK DILUTION UNDER CALIFORNIA BUSINESS AND PROFESSIONAL CODE § 14330)**

51. Plaintiff realleges and incorporates herein the allegations of Paragraphs 1-42, inclusive.

52. This is an action for dilution of the distinctive quality of a mark and injury to business reputation pursuant to California Business and Professional Code § 14330. This cause of action is separate and independent of the

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cause of action as set forth in Count I, but is between the same parties and is based on the same operative facts as set forth in Count I. Pendent jurisdiction of this Court for Count IV is therefore present pursuant to 28 U.S.C. § 1338(b). Venue is proper in this District under 28 U.S.C. § 1391.

53. Through Defendant's use and advertisement of the "BidRx" trademark on its website and promotion of that site on the Internet, causes a likelihood of injury to the business reputation of the Plaintiff and a likelihood of dilution of the distinctive quality of Plaintiff's "Bid for Rx" trademark in violation of California Code § 14330.

54. By committing the acts herein alleged, Defendant has been guilty of unfair competition, deceptive advertising and unfair trade practices, in violation of the California common law of unfair competition, causing Plaintiff damages and loss of profits. Defendant's unlawful conduct will continue to damage Plaintiff unless enjoined by this Court, and Plaintiff has no adequate remedy at law.

**FIFTH CLAIM FOR RELIEF
(VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION
LAWS Bus. Prof. Code § 17200)**

55. Plaintiff realleges and incorporates herein the allegations of Paragraphs 1-41, inclusive.

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56. This is an action for unfair methods of competition and unfair and deceptive acts and practices in the conduct of Defendant's trade in violation of the California Bus. Prof. Code § 17200, et seq.

57. This cause of action is separate and independent of the cause of action set forth in Count I, but is between the same parties and is based on the same operative facts as set forth in Count I. Pendent jurisdiction of this Court for Count V is therefore present pursuant to 28 U.S.C. § 1338(b.). Venue is proper in this District under 28 U.S.C. § 1391.

58. By committing the acts herein alleged, Defendant has been guilty of unfair methods of competition and unfair and deceptive acts and practices in the conduct of its trade within the State of California in violation of California Business and Professional Codes §§ 14330 and 17200 and the Lehman Act causing Plaintiff damages and loss of profits. Defendant's unlawful conduct will continue to damage Plaintiff unless enjoined by this Court, and Plaintiff has no adequate remedy at law.

**SIXTH CLAIM FOR RELIEF
(UNJUST ENRICHMENT)**

59. Plaintiff realleges and incorporates herein the allegations of Paragraphs 1-58, inclusive.

60. As a direct and proximate consequence of the wrongful conduct alleged hereinabove, a benefit was conferred upon Defendant in the form of profits from the use of the name BidRx.

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61. Defendant was conscious that they received this benefit at the expense and to the injury of Plaintiff.

62. The circumstances as set forth hereinabove would make it inequitable for the Defendant to retain the benefits.

WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

1. That the Court find that Defendant has infringed Plaintiff's copyrights in the Mark.
2. That the Court find a substantial likelihood that Defendant will continue to infringe Plaintiff's trademark in the Mark unless enjoined from doing so.
3. That Defendant, their directors and officers, agents, servants, employees, and all other persons in active concert or privity or in participation with them, be enjoined from directly or indirectly infringing Plaintiff's rights in the Mark or continuing to market, offer, sell, dispose of, license, lease, transfer, display, advertise, reproduce, develop or manufacture any works derived or copied from the Mark or to participate or assist in any such activity.
4. That Defendant, their directors and officers, agents, servants, employees, and all other persons in active concert or privity or in

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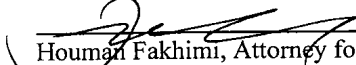
participation with them, be enjoined to return to Plaintiff any and all originals, copies, facsimiles, or duplicates of the Mark in their possession, custody or control.

5. That judgment be entered for Plaintiff and against Defendant for Plaintiff's actual damages according to proof, and for any profits attributable to infringements of Plaintiff's trademark, in accordance with proof.
6. That judgment be entered for Plaintiff and against Defendant for statutory damages based upon Defendant's acts of infringement.
7. That Defendant be required to account for all gains, profits, and advantages derived from its acts of infringement and for its other violations of law.
8. That all gains, profits and advantages derived by Defendants from their acts of infringement and other violations of law be deemed to be held in constructive trust for the benefit of Plaintiff.
9. That Plaintiff has judgment against Defendant for Plaintiff's costs and attorneys' fees.
10. That Defendant be ordered to surrender for destruction all products, nameplates, labels, advertisements and other materials constituting infringement of Plaintiff's designation of origin.

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11. That the Court grant such other, further, and different relief as the Court deems proper under the circumstances.

Dated: 9-16-06

FAKHIMI & ASSOCIATES

Houman Fakhimi, Attorney for Plaintiff


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JURY DEMAND

PLAINTIFF hereby demands trial by jury on all issues triable to a jury.

Dated: 9-15-06

FAKHIMI & ASSOCIATES


Hourman Fakhimi, Attorney for
Plaintiff.