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 14

15 **IN THE UNITED STATES DISTRICT COURT**
 16 **FOR THE DISTRICT OF NEVADA – SOUTHERN DIVISION**

<p>17 ARROW PRODUCTIONS, LTD., a 18 Nevada Corporation, 19 Plaintiff, 20 v. 21 V.C.X. LTD., a Nevada Corporation, 22 DAVID H. SUTTON, an Individual and DOES 1-10, 23 Defendants 24</p>

Case Number _____

ORIGINAL COMPLAINT

1. TRADEMARK INFRINGEMENT BY INFRINGEMENT OF REGISTERED MARKS, FEDERAL AND NEVADA;
2. TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION AT COMMON LAW;
3. UNFAIR COMPETITION BY VIOLATING SECTION 43(a) OF THE LANHAM ACT;
4. TRADEMARK DILUTION, BY VIOLATING LANHAM ACT 43(c) AND NEV. REV. STAT. ANN. § 600.435
5. COUNTERFEIT GOODS VIOLATING LANHAM ACT §§ 34(d) AND 35(b)
6. COPYRIGHT INFRINGEMENT

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3 INFRINGEMENT OF COMMON-LAW

4 TRADEMARK RIGHTS – LINDA LOVELACE™ 16

5 EIGHTH CLAIM FOR RELIEF

6 VIOLATION OF SECTION 43(a) OF THE LANHAM ACT

7 – LINDA LOVELACE™ [15U.S.C. § 1125(a)] 17

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10 – LINDA LOVELACE™ [15U.S.C. § 1125(c)] 18

11 TENTH CLAIM FOR RELIEF

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3 INADEQUATE REMEDY AT LAW FOR THE THIRTEENTH
 CLAIM FOR RELIEF 24

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5 **PRAYER FOR RELIEF** 25

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1 **ORIGINAL COMPLAINT**

2 COMES NOW Plaintiff Arrow Productions, Ltd. and, based upon knowledge with
3 respect to its own acts and information and belief with respect to acts of others,
4 complains:

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6 **SUMMARY**

7 This case arises from Deep Throat® – Plaintiff’s trademark for the titles to a series
8 of motion pictures – along with the trademark Linda Lovelace® and Plaintiff’s copyright
9 on the famous motion picture with the name Deep Throat® – the first of the series. This
10 action is to cause the defendants to cease violating those rights and to recover damages
11 for past violations.

12
13 **JURISDICTION AND VENUE**

14 1. This Court has jurisdiction over the federal trademark claims pursuant to
15 28 U.S.C. § 1331 (general federal question), 15 U.S.C. § 1121(a)(trademark) and
16 28 U.S.C. § 1338(a)(trademark).

17 2. This Court has jurisdiction over the copyright claims pursuant to
18 28 U.S.C. § 1331 (general federal question) and 28 U.S.C. § 1338(a).

19 3. Further, because this Court has jurisdiction to address the controversy
20 before it, 28 U.S.C. § 2201 grants the Court authority to declare the rights of the parties
21 before it, and 28 U.S.C. § 2202 authorizes the Court to grant such further relief, including
22 injunctive relief, as the Court may deem necessary and proper.

23 4. Further, this Court has supplemental jurisdiction over the trademark claims
24 brought under Nevada law pursuant to 28 U.S.C. § 1367 because those claims are so

1 related to claims in the action over which the court has original jurisdiction that they form
2 part of the same case or controversy under Article III of the United States Constitution.

3 5. Venue is proper because all of the individual defendants reside in Clark
4 County, Nevada and all of the entity defendants have their principal offices in Clark
5 County, Nevada and because a substantial part of the events or omissions giving rise to
6 the claim occurred in Clark County, Nevada. 28 U.S.C. § 1391(b)(1-2).

7 6. Venue is proper in this division of this district because all individual
8 defendants reside in Clark County, Nevada and all of the entity defendants have their
9 principal offices in Clark County, Nevada. Local Rules IA 6-1 and IA 8-1(a).

10 11 **PARTIES**

12 7. Plaintiff Arrow Productions, Ltd. (“Arrow” or “Plaintiff”) is a corporation,
13 organized and existing under the laws of State of Nevada with its principal office in the
14 City of Las Vegas, Clark County, Nevada. “Arrow” or “Plaintiff” as used herein includes
15 the company under its prior ownership before 1996 when Arrow Productions, Ltd. was
16 formed and acquired the entire business from its previous ownership.

17 8. V.C.X. Ltd. (“VCX”) is a is a corporation, organized and existing under the
18 laws of the State of Nevada with its principal office in the City of North Las Vegas,
19 Clark County, Nevada.

20 9. Defendant David H. Sutton (“Sutton”) is an individual who is a resident and
21 citizen of Clark County, Nevada. He is the sole officer, director and shareholder of VCX.

22 10. On information and belief, individuals other than Sutton are involved in
23 VCX’s unlawful and improper activities described in this Complaint. The true names or
24 capacities, of those persons presently are unknown to Plaintiff. Consequently they are
25 referred to herein as John Does 1 through 5 (collectively the “John Doe Individual
26

1 Defendants”). On information and belief, the John Doe Individual Defendants are various
2 individuals who have participated in the acts alleged in this Complaint that give rise to
3 liability. Plaintiff will seek leave to amend this complaint to show the unknown John Doe
4 Individual Defendants’ true names and capacities when they are ascertained.

5 11. On information and belief, entities other than VCX are involved in VCX’s
6 unlawful and improper activities described in this Complaint. The true names, capacities
7 and form of those entities presently are unknown to Plaintiff. Consequently they are
8 referred to herein as John Does 6 through 10 (collectively the “John Doe Entity
9 Defendants”). On information and belief, the John Doe Entity Defendants are various
10 entities of unknown form who have participated in the acts alleged in this Complaint that
11 give rise to liability. Plaintiff will seek leave to amend this complaint to show the
12 unknown John Doe Entity Defendants’ true names and capacities when they are
13 ascertained.

14 12. “Defendants” hereafter refers collectively to Defendant VCX and
15 Defendant Sutton, along with any Doe defendants later added to the complaint.

17 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

18 13. Plaintiff and VCX are competitors, both in the business of selling
19 prerecorded sexually oriented motion pictures for personal home use, presently and, in
20 recent years, in DVD format and previously in VHS videotape format.

21 14. Plaintiff also has been in the business from time to time of making its own
22 sexually oriented motion pictures for personal home use, presently and in recent years in
23 DVD format and previously in VHS videotape format. Plaintiff also, going back to at
24 least the early 1970s, made sexually oriented motion pictures for theatrical exhibition at
25 auditorium-style theaters that specialized in that genre , although by the 1990s, such
26

1 theaters largely ceased to exist, as prerecorded videotapes of the same motion pictures
2 had captured the market.

3 15. VCX was incorporated in 1996. Originally, however, V C X Incorporated,
4 a California corporation, was created in 1979, along with related corporations called
5 Direct Video Corporation and Showcase Video Corporation, during the early stages of the
6 home videotape era. In approximately 1986, one or all of those corporations went into
7 bankruptcy and Rudy Sutton, now deceased, who had been an employee and part owner
8 there, purchased the rights to that corporation's film library from the corporation's
9 bankruptcy trustee. In 1996 Rudy Sutton incorporated his ongoing business to its present
10 corporate form. On December 14, 2006, Rudy Sutton died. Defendant David M. Sutton
11 has been the sole shareholder, director and officer of VCX since at least then, and was
12 heavily involved in the company at least several years before then.

13 16. VCX's stock and trade is marketing sexually oriented motion pictures in
14 DVD format and over the Internet, which motion pictures primarily were made in the
15 1970s and 1980s, although it produced some movies of its own beginning in about 2004.
16 Its library of films includes those that Rudy Sutton bought from the bankruptcy trustee of
17 the original VCX, others that VCX has acquired rights to by copyright assignment or
18 license and others that VCX believes are in the public domain, generally because of a
19 belief that they were exhibited or sold prior to March 1, 1989, the effective date of the
20 Berne Convention Implementation Act of 1988, 17 U.S.C. § 101, when the copyright law
21 required affixation of a copyright notice as a requisite to maintaining an enforceable
22 copyright.

23 17. The "Deep Throat[®] Motion Picture" is a motion picture work created in
24 approximately 1971. It is a famous motion picture, having enjoyed immense popularity
25 since it was first made. Numerous subsequent motion pictures made and released by
26

1 Plaintiff have also carried the title “Deep Throat,” all with an additional subtitle,
2 collectively the “Deep Throat® Series,” beginning with the Deep Throat® Motion Picture,
3 and as follows:

- 4 a. Deep Throat®
- 5 b. Deep Throat® # 2¹
- 6 c. Deep Throat® # 3
- 7 d. Deep Throat® # 4
- 8 e. Deep Throat® # 5
- 9 f. Deep Throat® # 6
- 10 g. Deep Throat® the Quest Begins
- 11 h. Deep Throat® the Quest Jailbreak
- 12 i. Deep Throat® the Quest #3
- 13 j. Deep Throat® the Quest #4
- 14 k. Deep Throat® the Quest #5
- 15 l. Deep Throat® the Quest #6
- 16 m. Deep Throat® the Quest Best of 3-way
- 17 n. Deep Throat® the Quest Best of Anal
- 18 o. Deep Throat® the Quest Best of Oral
- 19 p. Deep Throat® the Quest Best of Orgies

20 18. The “Deep Throat® Mark” is a common-law mark under Nevada law, a
21 registered mark under Nevada law, Registration Number E0094112009-8 and a mark
22 registered with the United States Patent and Trademark Office, Registration Number
23

24
25 ¹ As noted, *infra*, there were two versions of this motion picture, albeit having
26 substantial much in common.

1 2993913. The Deep Throat[®] Mark is a famous trademark, as that term is defined and
2 understood under NEV. REV. STAT. § 600.435 and 15 U.S.C. § 1125(c).

3 19. The central character in the Deep Throat[®] Motion Picture was Linda
4 Lovelace[™], portrayed in that original motion picture by an actress whose real name was
5 Linda Susan Boreman, according to a book she published in 1980 about the making of
6 Deep Throat[®] Motion Picture.²

7 20. The Deep Throat[®] Motion Picture was without exception billed as “Deep
8 Throat, Starring Linda Lovelace.” Two subsequent movies other than the Deep Throat
9 series with the Linda Lovelace[™] character in the title are as follows:

- 10 a. Linda Lovelace – Confessions of Linda Lovelace
- 11 b. Linda Lovelace – Stars Who Do Hardcore Throat-F***³

12 21. Additionally, the Linda Lovelace[™] character was played by Linda Susan
13 Boreman in Deep one version of Throat #2. Different actresses portrayed Linda
14 Lovelace[™] in Deep Throat #2 when it was re-edited, as well as in Deep Throat #3, Deep
15 Throat #4 and Deep Throat #5.

16 22. In neither of those two, subsequent Linda Lovelace[™] motion pictures was
17 the Linda Lovelace[™] character played by Linda Susan Boreman, who died in April,
18 2002, although Linda Susan Boreman’s portrayal of that character appeared in trailers
19 associated with those motion pictures.⁴

20
21 ² M. McGrady and L. Boreman, ORDEAL (Citadel - Kensington Publishing Corp.
22 1980).

23 ³ The last word of this title replaces with symbols the last three letters of a four-
24 letter word that is generally considered offensive in formal settings.

25 ⁴ A “trailer”, notwithstanding its name, generally appears prior to the feature
26 motion picture, its function being to show highlights of and advertise other motion pictures.
27 In mainstream motion picture theaters, they typically are promotions of upcoming motion
28 pictures or motion pictures currently showing in other theaters operated as a part of the same

1 23. Linda Lovelace™ is thereby a trademark the “Linda Lovelace™ Mark;” it
2 is registered as such with the Secretary of State of the State of Nevada, Registration
3 Number E0139232009-6; an application has been filed in the United States Patent and
4 Trademark Office, Serial Number 78869507, has been published there for opposition in
5 2008 with no opposition filed, and is awaiting the filing of an affidavit of use. Linda
6 Lovelace™ is a famous trademark.

7 24. The Deep Throat® Motion Picture was made in or about 1971 by Plaintiff.⁵
8 It was filmed on color motion picture film. Plaintiff remains in possession of the
9 internegative.⁶

10 25. For the Deep Throat® Motion Picture, after it was made and answer prints
11 struck, Plaintiff maintained control of all of those prints. Each time the Deep Throat®
12 Motion Picture played in a theatre, the print never left Plaintiff’s control. Rather, it was
13 “four-walled,” meaning that Plaintiff’s employees rented the theater, sold tickets to the
14 theatergoers, collected the tickets and operated the projector.

15 26. Therefore the theatrical exhibition of the motion picture by Plaintiff did not
16 constitute “publication” under the Copyright Act.

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20 chain.

21 ⁵ The motion picture was actually created and directed by the late Gerard
22 Damiano as a work for hire of the predecessor corporation to Plaintiff Arrow Productions,
23 Ltd.

24 ⁶ An internegative is motion picture film stock used to make release prints for
25 distribution to movie theaters. After a film is shot, the original negatives – taken directly
26 from the camera equipment – are edited into correct sequence and printed onto fresh stock
27 as a cohesive film, creating an interpositive print used for color timing. From the
28 interpositive, answer prints, which include the color-corrected imagery and a properly synced
sound track are made. Once approved by the studio, the final answer print is made into an
internegative used for striking copies that will be delivered to theaters for viewing.

1 27. When home videotape was introduced in the late 1970s, Plaintiff created
2 videotapes of the Deep Throat[®] Motion Picture, always containing a copyright notice as
3 required. By that time, all prints also contained a copyright notice.

4 28. The first time that Plaintiff voluntarily relinquished control of any copy of
5 the Deep Throat[®] Motion Picture was on videotape, and those videotapes all included
6 copyright notices.⁷

7 29. The copyright on the Deep Throat[®] Motion Picture was registered in March
8 of 1979 in the name of Plaintiff and a copyright certificate subsequently issued in due
9 course.

10 30. In sum, Plaintiff owns the copyright on the Deep Throat[®] Motion Picture
11 and the trademark rights to the Deep Throat[®] Mark and the Linda Lovelace[™] Mark.

12 31. In early 2009, Defendants caused thousands of copies of the Deep Throat[®]
13 Motion Picture using the Deep Throat[®] Mark and the Linda Lovelace[™] Mark that were
14 made and distributed throughout at least Nevada and the rest of the United States, and
15 possibly world-wide.

16
17 **TRADEMARK CLAIMS – DEEP THROAT[®]**

18 **FIRST CLAIM FOR RELIEF**

19 **INFRINGEMENT OF A REGISTERED MARK – DEEP THROAT[®]**

20 **[15 U.S.C. § 1117(a)]**

21 32. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the
22 previous paragraphs of this complaint.

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24 _____
25 ⁷ Plaintiff has been made aware of “pirated” copies – that is copies made without
26 permission from the copyright owner – in violation of Plaintiff’s copyright.

1 33. Plaintiff adopted the mark Deep Throat[®] in 1972 and has since used it
2 regularly in interstate commerce for a series of motion picture works using “Deep Throat”
3 as the title with those motion pictures subsequent to the first one in 1972 each adding a
4 subtitle. On June 10, 2004, Plaintiff filed an application for registration of said mark in
5 the United States Patent and Trademark Office. On September 13, 2005, said mark was
6 registered in the United States Patent and Trademark Office on the Principal Register
7 under the Act of 1946 covering the use of said mark on pre-recorded videotapes and
8 DVDs featuring adult entertainment programs and movies, registration number 2993913.
9 Said registration is now outstanding and valid.

10 34. Continuously since on or about June 11, 1972, Plaintiff has used the mark
11 Deep Throat[®] to identify its adult entertainment movies and to distinguish them from
12 those made and sold by others, by, among other things, prominently displaying the mark
13 Deep Throat[®] on the goods, their containers and the displays associated therewith. In
14 addition, Plaintiff has prominently displayed said mark on its motion pictures, point-of-
15 purchase displays, posters and in periodicals distributed throughout the United States as
16 well as on the Internet.

17 35. Defendants have infringed Plaintiff’s mark in interstate commerce by
18 various acts, including advertising and distributing prerecorded DVDs under the name
19 Deep Throat[®], and selling, offering for sale and advertising prerecorded DVDs containing
20 the Deep Throat[®] Motion Picture name and mark Deep Throat[®]. Said use of said name
21 and mark by Defendants is without permission or authority of Plaintiff and said use is
22 likely to cause confusion, to cause mistake and to deceive.

23 36. Defendant’s heretofore alleged acts of trademark infringement and unfair
24 competition have been committed with the intent to cause confusion, mistake and to
25 deceive.
26

1 37. Since on or about 2004, Plaintiff has given notice that its mark is registered
2 in the U.S. Patent and Trademark Office by displaying with the mark as used the letter R
3 enclosed within a circle. Defendants know that they are violating Plaintiff's trademark
4 rights.

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6 **SECOND CLAIM FOR RELIEF**
7 **INFRINGEMENT OF COMMON-LAW**
8 **TRADEMARK RIGHTS – DEEP THROAT®**

9 38. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the
10 previous paragraphs of this complaint.

11 39. Said acts constitute unfair competition and an infringement of Plaintiff's
12 common-law rights in said mark, Deep Throat®.

13 40. Continuously since on or about June 11, 1972, Plaintiff has used the mark
14 Deep Throat® to identify its goods and to distinguish them from those made and sold by
15 others, by, among other things, prominently displaying the mark Deep Throat® on the
16 goods, their containers and the displays associated therewith. In addition, Plaintiff has
17 prominently displayed said mark on its motion pictures, point-of-purchase displays,
18 posters and in periodicals distributed throughout the United States as well as on the
19 Internet. Said goods and advertising have been distributed in the trade area where
20 Defendants are doing business. As a result of said sales and advertising by Plaintiff under
21 said mark, said mark has developed and now has a secondary and distinctive trademark
22 meaning to purchasers in Defendants' trade area. Said mark has come to indicate to said
23 purchasers a meaning of motion pictures originating only with Plaintiff. As a result of
24 said association by purchasers of the mark Deep Throat® with Plaintiff, Defendants' said
25 use of the mark and name Deep Throat® is likely to cause confusion of said purchasers.

1 41. Defendants have infringed Plaintiff's mark as alleged herein with the intent
2 to deceive the public into believing that goods sold are made by, approved by, sponsored
3 by or affiliated with, Plaintiff. Defendants' acts as alleged herein were committed with
4 the intent to pass off and palm off Defendants' goods as the goods of Plaintiff, and with
5 the intent to deceive and defraud the public.

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THIRD CLAIM FOR RELIEF
VIOLATION OF SECTION 43(a) OF THE LANHAM ACT – DEEP THROAT®
[15 U.S.C. § 1125(a)]

42. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the previous paragraphs of this complaint.

43. Defendants have caused prerecorded motion picture DVDs to enter into interstate commerce with the designation and representation "Deep Throat" connected therewith. Said use of "Deep Throat" is a false designation of origin which is likely to cause confusion, to cause mistake and to deceive as to the affiliation, connection or association with Plaintiff and as to the origin, sponsorship, or approval of such motion pictures by Plaintiff. These acts are in violation of 15 U.S.C. § 1125(a), in that Defendants have used in connection with goods and services a false designation of origin, a false or misleading description and representation of fact which is likely to cause confusion, and to cause mistake, and to deceive as to the affiliation, connection, or association with Plaintiff and as to the origin, sponsorship, and approval of Defendants' goods, services and commercial activities by Plaintiff.

FOURTH CLAIM FOR RELIEF**FEDERAL TRADEMARK DILUTION – DEEP THROAT®****[15 U.S.C. § 1125(c)]**

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4 44. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the
5 previous paragraphs of this complaint.

6 45. The Deep Throat® mark is strong and distinctive, has long been used in
7 connection with the goods on which it appears, has long been the subject of substantial
8 advertising and promotion, has been used and advertised throughout the United States, is
9 widely recognized by consumers and those in the trade, is in substantially exclusive use
10 by Plaintiff and is federally registered, as alleged above. Plaintiff's mark Deep Throat® is
11 recognized by the general consuming public of the United States as a designation of
12 source for the goods of Plaintiff and is therefore a famous mark. The acts of Defendants
13 alleged herein were commenced from a time after Plaintiff's mark became famous.

14 46. Defendants have made use of Deep Throat® as a mark in connection with
15 goods which Defendants have sold and transported in United States interstate commerce.
16 Defendants' use of Deep Throat® as a mark or trade name creates a likelihood of
17 association with Plaintiff's famous mark Deep Throat® arising from its similarity to
18 Plaintiff's famous mark.

19 47. Defendants' acts are in violation of Lanham Act § 43(c) in that they are
20 likely to cause dilution by blurring by impairing the distinctiveness of Plaintiff's famous
21 mark Deep Throat®, all to the irreparable injury to and damage of Plaintiff. Defendants'
22 acts are also in violation of Lanham Act § 43(c) in that they are likely to cause dilution by
23 tarnishment by harming the reputation of Plaintiff's famous mark Deep Throat®, all to the
24 irreparable injury to and damage of Plaintiff.

1 48. Defendants committed these acts willfully and with the intent to create an
2 association with Plaintiff’s famous mark. Defendants willfully intended to trade on the
3 recognition of Plaintiff’s famous mark. Defendants willfully intended to harm the
4 reputation of the famous mark.

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6 **FIFTH CLAIM FOR RELIEF**
7 **INFRINGEMENT OF A**
8 **NEVADA REGISTERED TRADEMARK – DEEP THROAT®**
9 **[NEV. REV. STAT. § 600.420]**

10 49. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the
11 previous paragraphs of this complaint.

12 50. Without consent of Plaintiff, the Registrant, Defendants used a
13 reproduction, counterfeit, copy and colorable imitation of a mark registered in this State,
14 namely, Deep Throat®, in connection with the sale, offering for sale and advertising of
15 goods, namely, the Deep Throat which use is likely to cause confusion or mistake or
16 result in deception as to the source of origin of such goods or services.

17 51. Without consent of Plaintiff, the Registrant, Defendants reproduced,
18 counterfeited, copied and colorably imitated a mark registered in this State, namely, the
19 Deep Throat® Motion Picture, and applied and or caused to apply that reproduction,
20 counterfeit, copy and colorable imitation to labels, signs, prints, packages, wrappers,
21 receptacles and advertisements intended to be used in conjunction with the sale or other
22 distribution in this State of goods or services.

SIXTH CLAIM FOR RELIEF**NEVADA TRADEMARK DILUTION – DEEP THROAT®****[NEV. REV. STAT. § 600.435]**

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4 52. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the
5 previous paragraphs of this complaint.

6 53. The Deep Throat® mark is strong and distinctive, has long been used in
7 connection with the goods on which it appears, has long been the subject of substantial
8 advertising and promotion, has been used and advertised throughout Nevada, is widely
9 recognized by consumers and those in the trade, is in substantially exclusive use by
10 Plaintiff and is federally and Nevada registered, as alleged above. Plaintiff's mark Deep
11 Throat® is recognized by the general consuming public of the United States as a
12 designation of source for the goods of Plaintiff and is therefore a famous mark. The acts
13 of Defendants alleged herein were commenced from a time after Plaintiff's mark became
14 famous.

15 54. Defendants have made use of Deep Throat® as a mark in connection with
16 goods which Defendants have sold and transported in Nevada commerce. Defendants'
17 use of Deep Throat® as a mark creates a likelihood of association with Plaintiff's famous
18 mark Deep Throat® arising from its similarity to Plaintiff's famous mark.

19 55. Defendants' acts are in violation of NEV. REV. STAT. § 600.435 in that they
20 are likely to cause dilution by blurring and impairing the distinctiveness of Plaintiff's
21 famous mark Deep Throat®, all to the irreparable injury to and damage of Plaintiff.
22 Defendants' acts are also in violation of NEV. REV. STAT. § 600.435 in that they are likely
23 to cause dilution by tarnishment by harming the reputation of Plaintiff's famous mark
24 Deep Throat®, all to the irreparable injury to and damage of Plaintiff.

1 56. Defendants committed these acts willfully and with the intent to create an
2 association with Plaintiff’s famous mark. Defendants willfully intended to trade on the
3 recognition of Plaintiff’s famous mark. Defendants willfully intended to harm the
4 reputation of the famous mark.

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ALLEGATION OF DAMAGES

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FOR FIRST THROUGH FIFTH CLAIMS FOR RELIEF

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57. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the
previous paragraphs of this complaint.

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58. By reason of Defendants’ acts alleged herein, Plaintiff has and will suffer
damage to its business, reputation and good will and the loss of sales and profits Plaintiff
would have made but for Defendants’ acts.

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INADEQUATE REMEDY AT LAW

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FOR THE FIRST THROUGH SIXTH CLAIMS FOR RELIEF

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59. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the
previous paragraphs of this complaint.

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60. Defendants threaten to continue to do the acts complained of herein, and
unless restrained and enjoined, will continue to do so, all to Plaintiff’s irreparable
damage. It would be difficult to ascertain the amount of compensation which could afford
Plaintiff adequate relief for such continuing acts, and a multiplicity of judicial
proceedings would be required. Plaintiff’s remedy at law is not adequate to compensate it
for injuries threatened.

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1 **TRADEMARK CLAIMS – LINDA LOVELACE™**

2 **SEVENTH CLAIM FOR RELIEF**

3 **INFRINGEMENT OF COMMON-LAW**

4 **TRADEMARK RIGHTS – LINDA LOVELACE™**

5 61. Plaintiff here re-alleges, as if fully set forth, the allegations of all the
6 previous paragraphs of this complaint.

7 62. Said acts constitute unfair competition and an infringement of Plaintiff's
8 common-law rights in said mark, "Linda Lovelace™."

9 63. Continuously since on or about June 11, 1972, Plaintiff has used the mark
10 "Linda Lovelace™" to identify its goods and to distinguish them from those made and
11 sold by others, by among other things, prominently displaying the mark "Linda
12 Lovelace™" on the goods, their containers and the displays associated therewith. In
13 addition, Plaintiff has prominently displayed said mark on its motion pictures, point-of-
14 purchase displays, posters and in periodicals distributed throughout the United States as
15 well as on the Internet. Said goods and advertising have been distributed in the trade area
16 where Defendants are doing business. As a result of said sales and advertising by
17 Plaintiff under said mark, said mark has developed and now has a secondary and
18 distinctive trademark meaning to purchasers in Defendants' trade area. Said mark has
19 come to indicate to said purchasers a meaning of motion pictures originating only with
20 Plaintiff. As a result of said association by purchasers of the mark "Linda Lovelace™"
21 with Plaintiff, Defendants' said use of the mark and name "Linda Lovelace™" is likely to
22 cause confusion of said purchasers.

23 64. Defendants have infringed Plaintiff's mark as alleged herein with the intent
24 to deceive the public into believing that goods sold are made by, approved by, sponsored
25 by or affiliated with, Plaintiff. Defendants' acts as alleged herein were committed with
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1 the intent to pass off and palm off Defendants' goods as the goods of Plaintiff, and with
2 the intent to deceive and defraud the public.

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4 **EIGHTH CLAIM FOR RELIEF**
5 **VIOLATION OF SECTION 43(a) OF THE LANHAM ACT**
6 **– LINDA LOVELACE™**
7 **[15U.S.C. § 1125(a)]**

8 65. Plaintiff here re-alleges, as if fully set forth, the allegations of all the
9 previous paragraphs of this complaint.

10 66. Defendants have caused prerecorded motion picture DVDs to enter into
11 interstate commerce with the designation and representation "Linda Lovelace™"
12 connected therewith. Said use of "Linda Lovelace™" is a false designation of origin
13 which is likely to cause confusion, to cause mistake and to deceive as to the affiliation,
14 connection or association with Plaintiff and as to the origin, sponsorship, or approval of
15 such motion pictures by Plaintiff. These acts are in violation of 15 U.S.C. § 1125(a), in
16 that Defendants have used in connection with goods and services a false designation of
17 origin, a false or misleading description and representation of fact which is likely to cause
18 confusion, and to cause mistake, and to deceive as to the affiliation, connection, or
19 association with Plaintiff and as to the origin, sponsorship, and approval of Defendants'
20 goods, services and commercial activities by Plaintiff.

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NINTH CLAIM FOR RELIEF**FEDERAL TRADEMARK DILUTION – LINDA LOVELACE™****[15U.S.C. § 1125(c)]**

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4 67. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the
5 previous paragraphs of this complaint.

6 68. The “Linda Lovelace™” mark is strong and distinctive, has long been used
7 in connection with the goods on which it appears, has long been the subject of substantial
8 advertising and promotion, has been used and advertised throughout the United States, is
9 widely recognized by consumers and those in the trade, is in substantially exclusive use
10 by Plaintiff and is federally registered, as alleged above. Plaintiff’s mark “Linda
11 Lovelace™” is recognized by the general consuming public of the United States as a
12 designation of source for the goods of Plaintiff and is therefore a famous mark. The acts
13 of Defendants alleged herein were commenced from a time after Plaintiff’s mark became
14 famous.

15 69. Defendants have made use of “Linda Lovelace™” as a mark in connection
16 with goods which Defendants have sold and transported in United States interstate
17 commerce. Defendants’ use of the “Linda Lovelace™” as a mark or trade name creates a
18 likelihood of association with Plaintiff’s famous mark “Linda Lovelace™” arising from
19 its similarity to Plaintiff’s famous mark.

20 70. Defendants’ acts are in violation of Lanham Act § 43(c) in that they are
21 likely to cause dilution by blurring by impairing the distinctiveness of Plaintiff’s famous
22 mark “Linda Lovelace™,” all to the irreparable injury to and damage of Plaintiff.
23 Defendants’ acts are also in violation of Lanham Act § 43(c) in that they are likely to
24 cause dilution by tarnishment by harming the reputation of Plaintiff’s famous mark
25 “Linda Lovelace™,” all to the irreparable injury to and damage of Plaintiff.

1 71. Defendants committed these acts willfully and with the intent to create an
2 association with Plaintiff's famous mark. Defendants willfully intended to trade on the
3 recognition of Plaintiff's famous mark. Defendants willfully intended to harm the
4 reputation of the famous mark.

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6 **TENTH CLAIM FOR RELIEF**
7 **INFRINGEMENT OF A**
8 **NEVADA REGISTERED TRADEMARK – LINDA LOVELACE™**
9 **[NEV. REV. STAT. § 600.420]**

10 72. Plaintiff here re-alleges, as if fully set forth, the allegations of all the
11 previous paragraphs of this complaint.

12 73. Without consent of Plaintiff, the Registrant, Defendants used a
13 reproduction, counterfeit, copy and colorable imitation of a mark registered in this State,
14 namely, Linda Lovelace™, in connection with the sale, offering for sale and advertising
15 of goods, namely, the Deep Throat which use is likely to cause confusion or mistake or
16 result in deception as to the source of origin of such goods or services.

17 74. Without consent of Plaintiff, the Registrant, Defendants reproduced,
18 counterfeited, copied and colorably imitated a mark registered in this State, namely, the
19 Linda Lovelace™ Motion Picture, and applied and/or caused to apply that reproduction,
20 counterfeit, copy and colorable imitation to labels, signs, prints, packages, wrappers,
21 receptacles and advertisements intended to be used in conjunction with the sale or other
22 distribution in this State of goods or services.

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ORIGINAL COMPLAINT

ELEVENTH CLAIM FOR RELIEF**NEVADA TRADEMARK DILUTION – LINDA LOVELACE™****[NEV. REV. STAT. § 600.435]**

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4 75. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the
5 previous paragraphs of this complaint.

6 76. The “Linda Lovelace™” mark is strong and distinctive, has long been used
7 in connection with the goods on which it appears, has long been the subject of substantial
8 advertising and promotion, has been used and advertised throughout Nevada, is widely
9 recognized by consumers and those in the trade, is in substantially exclusive use by
10 Plaintiff and is federally registered, as alleged above. Plaintiff’s mark “Linda
11 Lovelace™” is recognized by the general consuming public of the United States as a
12 designation of source for the goods of Plaintiff and is therefore a famous mark. The acts
13 of the Defendants alleged herein were commenced from a time after Plaintiff’s mark
14 became famous.

15 77. Defendants have made use of “Linda Lovelace™” as a mark in connection
16 with goods which Defendants have sold and transported in Nevada commerce.
17 Defendants’ use of “Linda Lovelace™” as a mark or trade name creates a likelihood of
18 association with Plaintiff’s famous mark “Linda Lovelace™” arising from its similarity to
19 Plaintiff’s famous mark.

20 78. Defendants’ acts are in violation of NEV. REV. STAT. § 600.435 in that they
21 are likely to cause dilution by blurring and impairing the distinctiveness of Plaintiff’s
22 famous mark “Linda Lovelace™,” all to the irreparable injury to and damage of Plaintiff.
23 Defendants’ acts are also in violation of NEV. REV. STAT. § 600.435 in that they are likely
24 to cause dilution by tarnishment by harming the reputation of Plaintiff’s famous mark
25 “Linda Lovelace™,” all to the irreparable injury to and damage of Plaintiff.

1 79. Defendants committed these acts willfully and with the intent to create an
2 association with Plaintiff's famous mark. Defendants willfully intended to trade on the
3 recognition of Plaintiff's famous mark. Defendants willfully intended to harm the
4 reputation of the famous mark.

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6 **ALLEGATION OF DAMAGES**

7 **FOR THE SIXTH THROUGH TENTH CLAIMS FOR RELIEF**

8 80. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the
9 previous paragraphs of this complaint.

10 81. By reason of Defendants' acts alleged herein, Plaintiff has and will suffer
11 damage to its business, reputation and good will and the loss of sales and profits Plaintiff
12 would have made but for Defendants' acts.

13
14 **INADEQUATE REMEDY AT LAW**

15 **FOR THE SIXTH THROUGH ELEVENTH CLAIMS FOR RELIEF**

16 82. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the
17 previous paragraphs of this complaint.

18 83. Defendants threaten to continue to do the acts complained of herein, and
19 unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable
20 damage. It would be difficult to ascertain the amount of compensation which could
21 afford Plaintiff adequate relief for such continuing acts, and a multiplicity of judicial
22 proceedings would be required. Plaintiff's remedy at law is not adequate to compensate it
23 for injuries threatened.

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COUNTERFEITING CLAIM**TWELFTH CLAIM FOR RELIEF****COUNTERFEITING****[15 U.S.C. §§ 1117(b) & 1116(d)]**

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5 84. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the
6 previous paragraphs of this complaint.

7 85. Defendants knew that the goods, namely copies of the Deep Throat[®]
8 Motion Picture bearing the Deep Throat[®] Mark, were counterfeit and intended to offer,
9 did offer and are offering them for sale.

10 86. The defendants intentionally used in commerce and are using in commerce
11 on goods, namely, copies of the Deep Throat[®] Motion Picture, a counterfeit mark,
12 namely, the Deep Throat[®] Mark, knowing that the mark was counterfeit, in connection
13 with the sale, offering for sale and distribution of said goods, which use was and is likely
14 to cause confusion, mistake and to deceive.

15 87. In so doing, the Deep Throat[®] Mark was a counterfeit mark because (1) the
16 mark on Defendants' goods was a non-genuine mark which were identical with and
17 substantially indistinguishable from the Deep Throat[®] Mark; (2) the Deep Throat[®] Mark
18 is registered on the Principal Register for the same goods in connection with which
19 Defendants' mark is being used and has been used;(3) the Deep Throat[®] Mark has been
20 and is in use; and (4) Defendants' use is not and was not on or in connection with goods
21 or services of which either of them was, at the time of production, authorized by the
22 holder of the mark, Plaintiff, to use the mark for those types of good or services, namely,
23 pre-recorded videotapes and DVDs featuring adult entertainment programs and movies.
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**ALLEGATION OF DAMAGES
FOR THE TWELFTH CLAIM FOR RELIEF**

88. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the previous paragraphs of this complaint.

89. By reason of Defendants' acts alleged herein, Plaintiff has and will suffer damage to its business, reputation and good will and the loss of sales and profits Plaintiff would have made but for Defendants' acts.

**INADEQUATE REMEDY AT LAW
FOR THE TWELFTH CLAIM FOR RELIEF**

90. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the previous paragraphs of this complaint.

91. Defendants threaten to continue to do the acts complained of herein, and unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable damage. It would be difficult to ascertain the amount of compensation which could afford Plaintiff adequate relief for such continuing acts, and a multiplicity of judicial proceedings would be required. Plaintiff's remedy at law is not adequate to compensate it for injuries threatened.

**COPYRIGHT CLAIM
THIRTEENTH CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT**

92. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the previous paragraphs of this complaint.

1 93. Defendants had access to the original work of authorship, the Deep Throat[®]
2 Motion Picture, of which tens of thousands of copies are in circulation.

3 94. Defendants violated specific, exclusive rights granted in section 106(1-2) of
4 the Copyright Act and owned by Plaintiff at the time of the infringement, namely, making
5 copies of the motion picture Deep Throat and making derivative works of the Deep
6 Throat[®] Motion Picture.

7 95. The foregoing acts of infringement occurred within the statute of limitations
8 period, namely, within three (3) years prior to the filing of this Complaint, and they
9 continue.

10 96. The statutory requirements of registration have been fulfilled, namely, in
11 1979 Plaintiff submitted the required registration form, fee and deposit copy to the United
12 States Copyright Office which thereafter issued a copyright certificate.

13
14 **ALLEGATION OF DAMAGES**

15 **FOR THE THIRTEENTH CLAIM FOR RELIEF**

16 97. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the
17 previous paragraphs of this complaint.

18 98. By reason of Defendants' acts alleged herein, Plaintiff has and will suffer
19 damage to its business, reputation and good will and the loss of sales and profits Plaintiff
20 would have made but for Defendants' acts.

21
22 **INADEQUATE REMEDY AT LAW**

23 **FOR THE THIRTEENTH CLAIM FOR RELIEF**

24 99. Plaintiff here re-alleges, as if fully set forth, the allegations of all of the
25 previous paragraphs of this complaint.

1 100. Defendants threaten to continue to do the acts complained of herein, and
2 unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable
3 damage. It would be difficult to ascertain the amount of compensation which could
4 afford Plaintiff adequate relief for such continuing acts, and a multiplicity of judicial
5 proceedings would be required. Plaintiff's remedy at law is not adequate to compensate it
6 for injuries threatened.

8 PRAYER FOR RELIEF

9 Therefore, Plaintiff prays for a judgment as follows:

10 A. A preliminary and permanent injunction against using the mark, Deep
11 Throat®.

12 B. A preliminary and permanent injunction against using the mark, Linda
13 Lovelace™.

14 C. an order to deliver to Plaintiff's attorney within thirty (30) days after
15 issuance of a Judgment, to be impounded or destroyed by Plaintiff, all signs, labels,
16 packages, wrappers and advertisements and DVDs bearing the mark Deep Throat®,
17 including that Defendants recall all copies distributed to their trade customers and include
18 those returned copies in that to be turned over to Plaintiff's attorney either at the time that
19 the copies are initially turned over or within thirty (30) days of Defendant's receipt of
20 copies returned from trade customers.

21 D. An order to deliver to Plaintiff's attorney within thirty (30) days after
22 issuance of a Judgment, to be impounded or destroyed by Plaintiff, all signs, labels,
23 packages, wrappers and advertisements and DVDs bearing the mark Linda Lovelace™,
24 including that Defendants recall all copies distributed to their trade customers and include
25 those returned copies in that to be turned over to Plaintiff's attorney either at the time that
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1 the copies are initially turned over or within thirty (30) days of Defendant's receipt of
2 copies returned from trade customers.

3 E. On the trademark and counterfeiting claims, damages in an amount to be
4 proven at trial.

5 F. On the counterfeiting claim, damages in an amount to be proven at trial or,
6 alternatively, statutory damages pursuant to 15 U.S.C. § 1117(c) of \$1,000,000.00, as to
7 be elected by Plaintiff.

8 G. On the counterfeiting claim, a preliminary and permanent injunction against
9 copying and against distributing unauthorized copies of the motion picture, "Deep
10 Throat."

11 H. On the counterfeiting claim, an order to deliver to Plaintiff's attorney within
12 thirty (30) days after issuance of a Judgment, to be impounded and destroyed by Plaintiff,
13 all copies not authorized by Plaintiff of the motion picture work "Deep Throat"
14 containing the counterfeit mark, the Deep Throat® Mark as herein alleged, including that
15 Defendants recall all copies distributed to their trade customers and include those returned
16 copies in that to be turned over to Plaintiff's attorney either at the time that the copies are
17 initially turned over or within thirty (30) days of Defendant's receipt of copies returned
18 from trade customers.

19 I. On the copyright claim, Damages in an amount to be proven at trial, or
20 alternatively, statutory damages pursuant to 17 U.S.C. § 504 of \$150,000.00, as to be
21 elected by Plaintiff.

22 J. On the copyright claim, an order to deliver to Plaintiff's attorney within
23 thirty (30) days after issuance of a Judgment, to be impounded and destroyed by Plaintiff,
24 all copies not authorized by Plaintiff of the Deep Throat® Motion Picture copied without
25 Plaintiff's authorization, including that Defendants recall all copies distributed to their
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1 trade customers and include those returned copies in that to be turned over to Plaintiff's
2 attorney either at the time that the copies are initially turned over or within thirty (30)
3 days of Defendant's receipt of copies returned from trade customers.

4 Dated: April 24, 2009.

Respectfully Submitted,

5 CLYDE DeWITT
6 LAW OFFICES OF CLYDE DeWITT, APC

7
8 By: /s/Clyde DeWitt
 Clyde DeWitt

9 Counsel for Plaintiff,
10 Arrow Productions, Ltd.

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