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**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY**

07-2-22351-7 SEA
CASE NO.:

COMPLAINT

LINDA LAU

INFOSPACE MOBILE, INC., PREMIUM
WIRELESS SERVICES, INC., CANADA,
MOVISO LLC, and INFOSPACE, INC.,

Plaintiffs,

v.

GELFAND, RENNERT, & FELDMAN
L.L.P.,

Defendant.

COMPLAINT

InfoSpace, Inc., InfoSpace Mobile, Inc., Moviso LLC and Premium Wireless Services, Inc., Canada (collectively "Plaintiffs" or "the InfoSpace Parties"), through their undersigned counsel, allege as follows for their Complaint against defendant Gelfand, Rennert, & Feldman, L.L.P. ("Gelfand"):

NATURE OF DISPUTE

1. This is an action for defamation, trade libel, tortious interference with contract, and tortious interference with business relations arising out of Gelfand's false, malicious and

COMPLAINT - 1
CASE NO.:
3144174_1.DOC

ORIGINAL

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1 unjustified statements regarding the InfoSpace Parties' integrity and honesty as business
2 partners, which statements led directly and foreseeably to damages to the InfoSpace Parties,
3 including breach of and interference with contracts between certain of the InfoSpace Parties and
4 the music publishers with whom they do business.

5
6 2. Specifically, Gelfand was engaged by EMI Entertainment World, Inc. ("EMI") to
7 conduct an audit to determine whether proper royalties and fees had been paid as required under
8 contracts between EMI and certain of the InfoSpace Parties.

9
10 3. Following the conclusion of its purported audit, Gelfand published a report to
11 EMI (the "Gelfand Report"), which contained numerous false and defamatory statements about
12 the InfoSpace Parties.

13
14 4. Gelfand's purported "audit" failed to meet the minimum standard of competency
15 expected by the auditing profession, was based on grounds so flimsy that Gelfand could not have
16 believed it to be accurate, and produced representations regarding the InfoSpace Parties that are
17 baseless.

18
19 5. As a direct and foreseeable result of Gelfand's intentional conduct, EMI breached
20 its contract with InfoSpace Mobile, Inc., and filed a multimillion dollar lawsuit against the
21 InfoSpace Parties asserting claims for breach of contract, fraud, and copyright infringement, all
22 based in substantial part upon Gelfand's false statements.

23
24 6. Gelfand's publication of the Gelfand Report and its additional false
25 representations regarding the InfoSpace Parties' conduct during the audit have directly harmed
26 the Plaintiffs' reputations and have interfered with InfoSpace Mobile, Inc.'s and PWS Canada's
27 contracts and business relationships with EMI and other licensors. As a result, Gelfand is liable
to the InfoSpace Parties for its improper conduct.

1 **PARTIES**

2 7. Plaintiff InfoSpace, Inc. is a Delaware corporation with a place of business at 601
3 108th Avenue NE, Suite 1200, Bellevue, Washington 98004.

4 8. Plaintiff InfoSpace Mobile, Inc. ("ISMI") is a California corporation with a place
5 of business at 601 108th Avenue NE, Suite 1200, Bellevue, Washington 98004. ISMI formerly
6 was known as Premium Wireless Services USA, Inc. and Premium Wireless Services USA, Inc.
7 d/b/a Moviso.
8

9 9. Plaintiff Premium Wireless Services, Inc., Canada ("PWS Canada") is a Canadian
10 corporation with an address of 66 Wellington Street, West, Suite 3600, Toronto, Ontario
11 M5H3Y2.

12 10. Plaintiff Moviso LLC is a California limited liability corporation with a place of
13 business at 601 108th Avenue NE, Suite 1200, Bellevue, Washington 98004. Moviso LLC owns
14 ISMI and PWS Canada, and is wholly owned by InfoSpace, Inc.
15

16 11. Upon information and belief, Defendant Gelfand, Rennert, & Feldman, L.L.P. is a
17 limited liability partnership with a principal place of business at 1880 Century Park East, Suite #
18 1600, Los Angeles California 90067. Upon information and belief, several Gelfand partners
19 reside in California. Gelfand bills itself as a "Royalty Related Services Group" providing
20 "royalty examination services." Gelfand's stated objective for such services "is to determine
21 whether reportings received by clients are in accordance with the provisions of governing
22 contracts and to report underpayments."
23

24 **JURISDICTION AND VENUE**

25 12. This Court has jurisdiction over all causes of action asserted herein pursuant to
26 Revised Code of Washington §2.08.010.
27

1 composition and permitting computer users to download cell phone ringtones containing such
2 compositions on a website at www.yourmobile.com, without a licensing agreement or other
3 authorization by EMI.

4 19. The GMO Parties settled EMI's action pursuant to a settlement agreement
5 effective as of December 5, 2000 (the "GMO Settlement Agreement").

6 20. Pursuant to the GMO Settlement Agreement, EMI released the GMO Parties and
7 their present, past and future business affiliates from all claims relating to the lawsuit.

8 21. Pursuant to the GMO Settlement Agreement, it was expressly stated that EMI did
9 not license any of the compositions it controlled to the GMO Parties. In the event that the GMO
10 Parties distributed any ringtone containing an EMI composition going forward without first
11 obtaining a license, EMI was given the right to obtain immediate and permanent injunctive relief
12 against the GMO Parties.
13

14 22. Between December 5, 2000 and May 31, 2001, EMI did not seek an injunction as
15 provided for in the GMO Settlement Agreement, or otherwise indicate to GMO that it believed
16 GMO was using EMI controlled compositions in cell phone ringtones.
17

18 23. On or about May 31, 2001, EMI entered into a license agreement with Premium
19 Wireless Services USA, Inc. ("PWS USA"), a subsidiary of Global Music One that was
20 improperly named in the agreement as "Premium Wireless Services, Inc." (the "2001
21 Agreement").
22

23 24. Under the terms of the 2001 Agreement, EMI granted PWS USA a license to
24 certain catalogues of musical compositions for which various EMI-related entities purported to
25 own and/or control the music publishing rights ("EMI Compositions") in connection with
26 monophonic and polyphonic cell phone ringtones that would be made available for downloading
27

1 onto wireless devices in exchange for royalty payments to EMI (“EMI Ringtones”).

2 25. The 2001 Agreement called for PWS USA to maintain books and records
3 regarding the use of EMI Compositions for three years from each quarterly accounting to EMI.

4 26. The 2001 Agreement permitted EMI, by its designated representative, and upon
5 reasonable written notice, to examine PWS USA’s books and records relating to the subject
6 matter of the 2001 Agreement.

7 27. EMI did not seek to review PWS USA’s books and records under the 2001
8 Agreement until August of 2005.

9 28. On or about June 1, 2002, EMI entered into a license agreement with Premium
10 Wireless Services USA, Inc. (“PWS USA”) and PWS Canada (the “2002 Agreement”).

11 29. Under the terms of the 2002 Agreement, EMI granted PWS USA and PWS
12 Canada a license to create EMI Ringtones and make them available for downloading onto
13 wireless devices in exchange for royalty payments to EMI.

14 30. The 2002 Agreement called for PWS USA and PWS Canada to maintain books
15 and records regarding the use of EMI Compositions for three years from each quarterly
16 accounting to EMI.

17 31. The 2002 Agreement permitted EMI, by its designated representative, and upon
18 reasonable written notice, to examine PWS USA’s and PWS Canada’s books and records
19 relating to the subject matter of the 2002 Agreement.

20 32. EMI did not seek to review PWS USA’s and PWS Canada’s books and records
21 under the 2002 Agreement until August of 2005.

22 33. The 2002 Agreement periodically was amended and extended by the parties
23 thereto and/or their successor companies. The 2001 Agreement, the 2002 Agreement, and all
24

1 amendments and extensions thereto are collectively referred to herein as the "EMI Agreements."

2 34. Following the stated end date of term of the 2002 Agreement as periodically, and
3 often retroactively, extended, ISMI and PWS Canada continued their contractual relationship and
4 licensing agreement with EMI under an implied contract.

5 35. ISMI's and PWS Canada's contract and business relationship with EMI continued
6 until EMI anticipatorily repudiated its agreement with ISMI and PWS Canada as a result of the
7 statements published by Gelfand to EMI in the Gelfand Report.
8

9 **InfoSpace Inc.'s Purchase of Moviso LLC**

10 36. In November of 2003, InfoSpace, Inc. acquired Moviso LLC from Vivendi
11 Universal for approximately \$25 million.

12 37. At the time of the acquisition, Moviso LLC owned PWS USA and PWS Canada,
13 which were engaged in the business of creating and distributing digital content such as games,
14 wallpaper and ringtones for use on personal wireless devices.
15

16 38. InfoSpace, Inc. arrived at its purchase price for Moviso LLC based upon
17 documents reflecting annual revenue in 2002 of less than \$4 million.

18 **Gelfand's Purported Audit of Royalty Payments Under the EMI Agreements**

19 39. Following notification by EMI in August of 2005 that its representative would be
20 conducting a review of certain of InfoSpace, Inc.'s subsidiaries books and records relating to
21 royalties and fees due to EMI pursuant to the EMI Agreements, Gelfand informed InfoSpace,
22 Inc. that it had been engaged by EMI to conduct the review.
23

24 40. From the first contacts with Gelfand, it was apparent to the InfoSpace Parties that
25 Gelfand's objectives for the review went beyond an independent audit conducted according to
26 professional accounting standards.
27

1 41. In a letter dated September 1, 2005 from Gelfand to InfoSpace, Inc., Gelfand
2 asked for access to all Master Ringtone Agreements (*i.e.* agreements governing the use of
3 portions of actual sound recordings by popular artists in ringtones) that PWS USA had entered
4 into, even though the EMI Agreements did not involve Master Ringtones, but rather were limited
5 to polyphonic and monophonic ringtones.
6

7 42. Gelfand insisted on a review of records from December of 2000 through June 30,
8 2005, even though the first of the EMI Agreements was not entered until May 31, 2001, there
9 was no basis to believe any EMI Ringtones were downloaded between December 6, 2000 (the
10 date of the GMO Settlement Agreement) and May 31, 2001, the EMI Agreements called for
11 books and records to be maintained only for three years, and InfoSpace, Inc. did not acquire
12 Moviso LLC until November of 2003.
13

14 43. Gelfand also was reluctant to enter into a non-disclosure agreement (“NDA”)
15 covering its review of the InfoSpace Parties’ books and records, even though such agreements
16 are standard in the industry.
17

18 44. It took several months of negotiation before Gelfand ultimately signed an NDA
19 governing its review.
20

21 45. The NDA was between Gelfand and Infospace, Inc. in Washington. The NDA
22 called for all disputes relating to the agreement to be brought in Washington State.
23

24 46. After the NDA was entered, Gelfand took the position that because the review
25 was covered by an NDA, Gelfand was entitled to review complete and unredacted
26 documentation from the InfoSpace Parties, including highly confidential information that had no
27 bearing on whether EMI had been properly paid the royalties and fees to which it was entitled
under the EMI Agreements.

1 47. On the purported ground that it needed to determine if PWS USA had complied
2 with a “most favored nations” clause in the EMI Agreements, Gelfand asked to have access to all
3 agreements Premium Wireless had entered with any company that licensed publishing rights to
4 musical compositions other than EMI (the “Third-Party Publishers”).

5 48. Gelfand strenuously objected to the Infospace Parties’ redacting of the names of
6 the Third-Party Publishers, even though the identities of such third-parties had no bearing on
7 whether PWS USA had complied with the MFN provision.

8 49. Infospace Inc. was reluctant to provide the names of the Third-Party Publishers to
9 Gelfand out of a concern that Gelfand would then contact one or more of such publishers and
10 seek to conduct a similar “audit” on their behalf.

11 50. InfoSpace, Inc. supervised the gathering from its subsidiaries of the voluminous
12 information requested by Gelfand and amassed the material that Gelfand requested and
13 InfoSpace, Inc. was reasonably able to locate at InfoSpace, Inc.’s Bellevue, Washington office.

14 51. On or about February 20, 2006, Gelfand commenced its examination at that
15 office, where InfoSpace, Inc. made available to Gelfand documents, records, employees and
16 even a consultant hired specifically to assist with Gelfand’s review.

17 52. At all times during the audit examination, the InfoSpace Parties made a good faith
18 effort to provide Gelfand with the information it needed to determine whether EMI had been
19 paid the proper amounts under the EMI Agreements.

20 53. Representatives of the InfoSpace Parties repeatedly explained to Gelfand that
21 virtually all of the information Gelfand needed to determine whether EMI had been properly paid
22 resided on the servers that hosted the ringtones and kept track of each ringtone downloaded, and
23 from which data the royalty reports to EMI were generated. Despite this information, Gelfand
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1 chose not to conduct a systems audit, but rather insisted on a review of paper documents that, in
2 substantial part, did not exist either because they never existed or because they had not been
3 maintained beyond the three years required by the EMI Agreements.

4 The Gelfand Report

5 54. On or about July 6, 2006, Gelfand issued the Gelfand Report, thereby
6 communicating Gelfand's claimed findings to EMI.
7

8 55. The Gelfand Report falsely states that the InfoSpace Parties had failed to pay to
9 EMI more than \$11.8 million dollars to which it was owed.

10 56. The Gelfand Report falsely states that Gelfand's work "was performed in
11 accordance with the American Institute of Certified Public Accountants' Statement on Standards
12 for Consulting Services."
13

14 57. In fact, the Gelfand Report contains numerous unfounded and unwarranted
15 conclusions regarding the InfoSpace Parties that are based upon methodologies not recognized
16 by the American Institute of Certified Public Accountants.

17 58. By way of example only, the Gelfand Report contains the following false and
18 defamatory statements:

- 19 • "additional royalties, fees and interest are due in the amount of \$11,887,374.74"
- 20 • "Contrary to their assurances, Infospace refused to provide us with many of the
21 requested items."
- 22 • "ADDITIONAL ROYALTIES AND FEES DUE" "Unreported Downloads –
23 Inception – 12/31/02 \$7,178,818.02"
- 24 • "Infospace was either unwilling or unable to provide any documentation that
25 would enable us to verify the downloads distributed and the resultant
26 accountings."
- 27 • "Based upon the information included [in the 2001 Vivendi Universal Annual
Report and articles published in the September 4, 2000 and September 14, 2002

1 issues of *Wireless Week*] we were able to develop an estimate of the number of
2 downloads actually distributed during the period.”

- 3 • “Unreported Downloads – 1/1/03 – 6/30/05 - \$255,649.60”
- 4 • “Incorrect Retail Prices – T-Mobile - \$945,790.07”

5 59. In the context presented, Gelfand’s statements and claimed conclusions as set
6 forth in the Gelfand Report implied that the conclusions were based upon facts learned by
7 Gelfand during the review that justified the conclusions.

8 60. In the context presented, Gelfand’s statements and claimed conclusions as set
9 forth in the Gelfand Report implied that such statements and conclusions were made in
10 accordance with professional accounting standards.

11 61. In the context presented, Gelfand’s statements to EMI implied that the InfoSpace
12 Parties had intentionally and massively underpaid royalties owing to EMI throughout EMI’s
13 relationship with the InfoSpace Parties.

14 62. In fact, Gelfand arrived at the sums it concluded are owed by the InfoSpace
15 Parties through a series of extrapolations and guesswork not grounded in verifiable fact or
16 permitted by professional auditing standards.

17 63. Although the Gelfand Report states that Gelfand was required “to undertake many
18 time consuming alternate procedures based on public information with results extrapolated
19 where necessary” due to unavailable information, the procedures Gelfand used failed to
20 accurately reflect any reasoned intention to accurately extrapolate the missing information.

21 64. Rather than limiting the scope of the audit to the time period contemplated in the
22 EMI Agreements, Gelfand improperly sought to conduct a review going back to a period from
23 before the first contract was even in effect.

24 65. Gelfand also did not seek to conduct a systems audit, which was the only effective
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1 way of auditing a systems-based business and instead Gelfand based the vast majority of its
2 conclusions upon hearsay statements of third parties.

3 66. The Gelfand Report based its conclusion that the InfoSpace Parties owed EMI
4 more than \$7 million for the period between December 5, 2000 and December 31, 2002 on a
5 statement made by Vivendi Universal shortly after its acquisition of PWS USA in an 2001 SEC
6 filing that “[a]s the parent company of YourMobile, PWS has delivered more than 90 million
7 ringtones to more than 12 million users in 85 countries since its inception.” On information and
8 belief, Gelfand undertook no efforts to verify this 90 million figure with InfoSpace data and
9 materials reflecting the actual number of downloads between the time the first of the EMI
10 Agreements became effective on May 31, 2001 and December 31, 2002.

11
12 67. Gelfand relied extensively upon Vivendi’s statement in an SEC filing, even
13 though the SEC entered a permanent injunction against Vivendi based on deliberate fraud related
14 to the same reporting period.

15
16 68. In performing its extrapolation based upon an unverified hearsay statement of 90
17 million ringtone downloads worldwide since “inception” of the business in 1999, Gelfand failed
18 to take into account any of the following: the number Gelfand was relying upon included a
19 period for which EMI released the InfoSpace Parties from all claims relating to use of EMI
20 Compositions; in the same SEC filing Gelfand relied upon it was stated that PWS had delivered
21 90 million content downloads worldwide since inception, which would have included games,
22 graphics and other media content in addition to ringtones; the “90 million” figure included
23 content downloads outside of the territories covered by EMI Agreements; the sales volumes and
24 revenues on which InfoSpace, Inc. based its purchase of Moviso were astronomically lower than
25 those used by Gelfand; and actual known numbers of downloads of EMI Ringtones were
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1 significantly less in later time periods, when more people owned cell phones and more cell
2 phones were capable of playing ringtones.

3 69. Gelfand also improperly applied an estimate of EMI's overall market share of cell
4 phone ringtones to its extrapolation of the 90 million hearsay quote. The estimate of EMI's
5 market share used by Gelfand was only applicable to a U.S. market, yet the 90 million ringtone
6 quote specifically stated it was a worldwide figure, where, upon information and belief, EMI's
7 market share was substantially less.
8

9 70. Gelfand also completely disregarded the relationship between EMI and the
10 predecessors to the InfoSpace Parties at the end of 2000 and early 2001. The Gelfand Report
11 assumes that the GMO Parties, upon execution of the GMO Settlement Agreement, immediately
12 began to allow more than 80,000 downloads of ringtones containing EMI controlled
13 compositions *each day* without EMI's taking any action whatsoever.
14

15 71. The Gelfand Report also based certain calculations on unverified press releases
16 and third-party statements regarding the InfoSpace Parties' alleged sales volume that are
17 inconsistent with other publicly available information. Conveniently for itself and its goal of
18 maximizing the amount to be demanded by EMI, Gelfand selected those unverified sources that
19 stated the highest sales volume accruing to the InfoSpace Parties, and disregarded far more
20 reliable information regarding sales volumes.
21

22 72. By relying upon unsubstantiated, grossly inaccurate, and patently unreliable
23 statements as the bases for its extrapolations, as well as implementing methodologies
24 inconsistent with the professional accounting standards under which Gelfand represented it was
25 operating, Gelfand reached conclusions that were false and based upon grounds so flimsy that
26 Gelfand could not possibly have believed them to be accurate.
27

1 73. Although the InfoSpace Parties went to great lengths to accommodate Gelfand
2 throughout Gelfand's review, the Gelfand Report falsely states that the InfoSpace Parties
3 "severely limited" Gelfand's ability to conduct the audit by, *inter alia*, failing to supply Gelfand
4 with the information Gelfand needed to conduct a proper examination.

5 74. Gelfand's statement to EMI regarding the InfoSpace Parties' conduct during the
6 review implied that it was based upon facts known to Gelfand based upon its personal
7 interactions with the InfoSpace Parties during the review.

8 75. Rather than attempting accurately to determine whether any monies were owing
9 to EMI under the EMI Agreements, and, if so, to accurately quantify such amounts, Gelfand
10 improperly sought to "maximize the cost-effective recovery to EMI Entertainment World, Inc."

11 76. On or about July 17, 2006, Gelfand published a similar report to Sony containing
12 its false conclusion that the InfoSpace Parties had underpaid Sony more than \$1.1 million in
13 royalties and fees to which Sony was owed under its contracts with the InfoSpace Parties.
14

15 77. Like the Gelfand Report to EMI, Gelfand's report to Sony was based upon wild
16 and unjustified extrapolations of hearsay statements of third-parties and other grounds so flimsy
17 that Gelfand could not reasonably have believed the conclusions to be accurate.
18

19 78. As a result of Gelfand's publication of its report to Sony, Sony has demanded
20 payment of \$1.1 million from the InfoSpace Parties and threatened to sue.
21

22 79. Gelfand's willingness to sacrifice professional standards and damage the
23 InfoSpace Parties' business in pursuit of its own economic gain rises to the level of malice.

24 80. As a direct, foreseeable, and, on information and belief, intended result of
25 Gelfand's publication to EMI of its false statements contained in the Gelfand Report including
26 that EMI was owed more than \$11.8 million under the terms of the EMI Agreements, EMI
27

1 anticipatorily repudiated its existing contract with ISMI and PWS Canada, and filed a
2 multimillion-dollar lawsuit against the InfoSpace Parties based substantially on Gelfand's
3 statements.

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**
6 **(Defamation-On Behalf of All Plaintiffs)**

7 81. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 80
8 as if fully set forth herein.

9 82. Gelfand published numerous false statements as complained of herein to EMI and
10 Sony concerning the Plaintiffs.

11 83. Gelfand's false statements about Plaintiffs impugned the Plaintiffs' integrity and
12 business methods.

13 84. Upon information and belief, Gelfand made the false statements either intending
14 the statements to harm the Plaintiffs, or with reckless disregard such that a reasonably prudent
15 person would anticipate damage to flow therefrom.

16 85. Among other things, Gelfand intentionally disregarded generally accepted
17 accounting standards and methodologies, it disregarded actual numbers of downloads of
18 ringtones from later periods in favor of extrapolating based upon unverified statements of third
19 parties that were inapplicable to the contracts at issue, and it disregarded its personal knowledge
20 of its own interactions with the Plaintiffs.

21 86. Gelfand's Reports to EMI and Sony were based on grounds so flimsy that
22 Gelfand could not have believed them to be accurate, or acted recklessly in disregard of the
23 Reports' veracity.

24 87. Gelfand was fully aware at the time it published the Reports that the conclusions
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26
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1 contained within portrayed the InfoSpace Parties as dishonest and untrustworthy business
2 partners.

3 88. Gelfand's false statements regarding the InfoSpace Parties amount to libel *per se*.

4 89. Upon information and belief, Gelfand intended that the misrepresentations in the
5 Gelfand Report would spur EMI to cut short its business with the Plaintiffs in order to draw
6 publicity to Gelfand's work and thereby increase Gelfand's own business contracts with other
7 music publishers with whom the Plaintiffs do or did business.
8

9 90. As a direct result of Gelfand's false statements, the Plaintiffs have suffered actual
10 damages including harm to their reputations.

11 91. On information and belief, Gelfand has republished certain of its false statements
12 from the Gelfand Report to Third-Party Publishers, resulting in additional damages including
13 further harm to the InfoSpace Parties' reputations.
14

15 92. As a result of Gelfand's conduct as complained of herein, Plaintiffs have been and
16 continue to be harmed and are entitled to monetary damages in an amount to be determined at
17 trial.

18 93. Gelfand's conduct as complained of herein was malicious, wanton, oppressive,
19 reckless and in willful disregard of the Plaintiffs' rights, thereby warranting the imposition of
20 punitive damages in order to deter similar unlawful conduct by Gelfand in the future.
21

22 **SECOND CLAIM OF RELIEF**
23 **(Trade Libel-On Behalf of All Plaintiffs)**

24 94. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 93
25 as if fully set forth herein.

26 95. Gelfand published numerous false statements as complained of herein to EMI
27 concerning the Plaintiffs.

1 96. Gelfand's false statements about Plaintiffs impugned the Plaintiffs' integrity and
2 business methods, and the services the Plaintiffs provided to EMI as EMI's licensees.

3 97. Upon information and belief, Gelfand made the false statements either intending
4 the statements to harm the Plaintiffs, or with reckless disregard such that a reasonably prudent
5 person would anticipate damage to flow therefrom.

6 98. Among other things, Gelfand intentionally disregarded generally accepted
7 accounting standards and methodologies, it disregarded actual numbers of downloads of EMI
8 Ringtones from later periods (which it relied upon elsewhere in its Report) in favor of
9 extrapolating based upon unverified statements of third parties that were inapplicable to the
10 contracts at issue, and it disregarded its personal knowledge of its own interactions with the
11 Plaintiffs.
12

13 99. Gelfand's Report was based on grounds so flimsy that Gelfand could not have
14 believed it to be accurate, or acted recklessly in disregard of the Report's veracity.
15

16 100. Gelfand was fully aware at the time it published the Report that the conclusions
17 contained within portrayed the Plaintiffs as dishonest and untrustworthy business partners who
18 had intentionally failed to perform their obligations to EMI under the EMI Agreements.

19 101. As a direct result of Gelfand's false statements, the Plaintiffs have suffered actual
20 damages including harm to their reputations as well as special damages in the form of lost
21 dealings.
22

23 102. As a result of Gelfand's conduct as complained of herein, Plaintiffs have been and
24 continue to be harmed and are entitled to monetary damages in an amount to be determined at
25 trial.
26

27 103. Gelfand's conduct as complained of herein was malicious, wanton, oppressive,

1 reckless and in willful disregard of the Plaintiffs' rights, thereby warranting the imposition of
2 punitive damages in order to deter similar unlawful conduct by Gelfand in the future.

3 **THIRD CLAIM OF RELIEF**
4 **(Tortious Interference With Contract-On Behalf Of Plaintiffs InfoSpace Mobile, Inc.**
5 **and Premium Wireless Services, Inc., Canada)**

6 104. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 103
7 as if fully set forth herein.

8 105. At the time Gelfand conducted its review of the books and records relating to the
9 EMI Agreements and published its Report to EMI, EMI and Plaintiffs ISMI and PWS Canada
10 had a valid, enforceable contract.

11 106. At all relevant times before, during and after the review, Gelfand was aware of the
12 existence of the contracts with EMI.

13 107. On information and belief, Gelfand provided the Gelfand Report to EMI with the
14 intent that EMI would rely upon Gelfand's false statements and conclusions set forth therein and
15 terminate its contractual relationship with ISMI and PWS Canada.

16 108. As a direct result of Gelfand's conduct as complained of herein, EMI prematurely
17 terminated its contract with ISMI and PWS Canada.

18 109. As a result of Gelfand's tortious interference with Plaintiffs ISMI and PWSI
19 Canada's contract with EMI, ISMI and PWSI Canada have been and continue to be harmed and
20 are entitled to monetary damages in an amount to be determined at trial.

21 110. Gelfand's conduct as complained of herein was malicious, wanton, oppressive,
22 reckless and in willful disregard of the Plaintiffs' rights, thereby warranting the imposition of
23 punitive damages in order to deter similar unlawful conduct by Gelfand in the future.

24 **FOURTH CLAIM OF RELIEF**
25 **(Tortious Interference With Business Relations-On Behalf Of Plaintiffs InfoSpace**
26

Mobile, Inc. and Premium Wireless Services, Inc., Canada)

1
2 111. Plaintiffs repeat and reallege the allegations set forth in Paragraphs 1 through 110
3 as if fully set forth herein.

4 112. ISMI and PWS Canada had a business relationship with EMI and Sony dating
5 back to at least 2001.

6
7 113. ISMI and PWS Canada also had business relationships with the Third-Party
8 Publishers.

9 114. Third-Party Defendant Gelfand was aware of ISMI and PWS Canada's ongoing
10 business relationships with EMI, Sony and certain of the Third-Party Publishers.

11 115. Gelfand's conduct as complained of herein interfered with these business
12 relationships.

13 116. Upon information and belief, Gelfand improperly performed its review and
14 reported false information in the Gelfand Report for the improper purpose of increasing its fee
15 from EMI and in order to draw publicity to Gelfand's work and thereby increase Gelfand's own
16 business contracts with Third-Party Publishers.

17
18 117. Upon information and belief, Gelfand used improper means, including revealing
19 confidential information subject to the NDA and republishing certain of its false statements and
20 conclusions contained in the Gelfand Report, in providing its report to Sony and in order to
21 solicit the business of the Third-Party Publishers it knew had business relations with ISMI and
22 PWS Canada.

23
24 118. Defendant Gelfand acted solely out of malice or relied upon dishonest, unfair and
25 improper acts in interfering with ISMI's and PWS Canada's business relations.

26 119. As a result of Gelfand's improper conduct, ISMI's and PWS Canada's business
27

1 relations with EMI, Sony and certain Third-Party Publishers have been and continue to be
2 harmed, causing damages to ISMI and PWSI Canada in an amount to be determined at trial.

3 120. Gelfand's conduct as complained of herein was malicious, wanton, oppressive,
4 reckless and in willful disregard of the Plaintiffs' rights, thereby warranting the imposition of
5 punitive damages in order to deter similar unlawful conduct by Gelfand in the future.
6

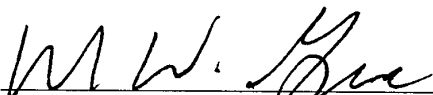
7 **PRAYER FOR JUDGMENT AND RELIEF**

8 WHEREFORE, Plaintiffs respectfully requests that this Court:

- 9 (a) Enter judgment in favor of Plaintiffs and against Gelfand;
10 (b) Award compensatory damages to Plaintiffs in an amount to be determined at
11 trial;
12 (c) Award punitive damages to Plaintiffs in an amount to be determined at trial;
13 (d) Award Plaintiffs their costs incurred in connection with this action;
14 (e) Award Plaintiffs pre-judgment interest as provided for by law;
15 (f) Award Plaintiffs post-judgment interest as provided for by law; and
16 (g) Award Plaintiffs such further and other relief as the Court deems just and
17 proper.

18
19 Respectfully submitted,

20
21 DATED: July 5, 2007

22 
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25 Seattle, Washington 98104
26 Douglas W. Greene, WSBA #22844
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