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Attorneys for Plaintiff EVOX Productions, LLC

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 EVOX PRODUCTIONS, LLC, a
13 Delaware limited liability company,

14 Plaintiff,

15 v.

16 VERIZON MEDIA INC., a
17 Delaware corporation, YAHOO!
18 INC., a Delaware corporation,
19 OATH, INC., a Delaware
20 corporation, and DOES 1 through 10,
inclusive,

21 Defendants.

Case No. 2:20-cv-2852

COMPLAINT FOR:

**(1) COPYRIGHT INFRINGEMENT;
and**

**(2) FEDERAL TRADEMARK
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff EVOX Productions, LLC complains in this action as follows:

2 **JURISDICTION AND VENUE**

3 1. This Court has subject matter jurisdiction over the action for the
4 infringement of United States copyrights pursuant to 17 U.S.C. § 501 *et seq.* and 28
5 U.S.C. §§ 1331 and 1338(a).

6 2. This Court has subject matter jurisdiction over the Lanham Act claims
7 pursuant to 15 U.S.C. §§ 1114, 1121, 1125(a) and 28 U.S.C. §§ 1331, 1338.

8 3. This Court has personal jurisdiction over Defendants because, on
9 information and belief, Defendants regularly conduct and have conducted business
10 in California and in this District by, among other things, licensing and supplying
11 products and services throughout the state of California. Specifically, on
12 information and belief, Defendants have entered into agreements with their media
13 partners in this District. Additionally, Defendants' conduct, which constitutes
14 copyright infringement and trademark infringement, occurred and continues to
15 occur in this District, and has caused and continues to cause Plaintiff to suffer harm
16 in this District.

17 4. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because,
18 *inter alia*, (a) Defendants are doing business within this District and (b)
19 Defendants' acts or omissions giving rise to this lawsuit, as well as substantial
20 injury to Plaintiff, have occurred and will continue to occur in interstate commerce,
21 in the State of California, and in this District.

22 **PARTIES**

23 5. Plaintiff EVOX Productions, LLC ("EVOX") is a Delaware Limited
24 Liability Company with its principal place of business at 2363 E. Pacifica Place,
25 Building 305, Rancho Dominguez, California 90220.

26 6. On information and belief, Defendant Yahoo! Inc. was a Delaware
27 corporation that was acquired by Verizon Communications, Inc. in 2017, including
28 the liability for the actions alleged in this Complaint.

1 7. On information and belief, Verizon Communications, Inc. combined
2 Yahoo!’s operating business with its existing media business to create a newly
3 branded organization, Defendant Oath, Inc. On information and belief, Oath, Inc.
4 was a Delaware corporation and was a subsidiary of Verizon Communications, Inc.

5 8. On information and belief, Oath Inc. was rebranded as Defendant
6 Verizon Media, Inc. Verizon Media, Inc. is a Delaware Corporation with its
7 principal place of business at 770 Broadway, New York, New York 10003. Verizon
8 Media, Inc. is a subsidiary of Verizon Communications, Inc. Defendants,
9 collectively, will be referred to as Yahoo!.

10 9. On information and belief, Yahoo! is a global internet services
11 provider which specializes in providing web services across a multitude of
12 platforms, including, but not limited to Yahoo! Answers, Yahoo! Directory, Yahoo!
13 Finance, Yahoo! Groups, Yahoo! Lifestyle, and Yahoo! Mail. Yahoo! also operates
14 a vast array of internet content services, in areas including advertising, video
15 sharing, fantasy sports, online mapping services, and social media.

16 10. Plaintiff is unaware of the true names and capacities of Does 1 through
17 10, and therefore sues these defendants by these fictitious names. Plaintiff will
18 amend this complaint to allege the Doe defendants’ true names and capacity when
19 they become known to Plaintiff.

20 11. On information and belief, in performing the acts or omissions
21 described in this Complaint, Does 1 through 10 (collectively, “Defendants”) were
22 acting as the principal, representative, agent, employee or alter ego of each other
23 and were acting within the scope of such agency or employment to commit the acts
24 alleged herein. Each defendant sued herein aided and abetted the other with the
25 intent that each would be successful in their mutual endeavors. Each defendant
26 contributed to Plaintiff’s damages and the statutory violations alleged herein.

1 **ALLEGATIONS**

2 **Plaintiff's Creation and Distribution of the Copyrighted Photographs and**
3 **EVOX Trademarks**

4 12. EVOX creates and licenses high-quality, digital images and
5 photographs featuring virtually every commercially available automotive vehicle
6 make and model in the United States since model year 2000. EVOX is the leading
7 creator of automotive image libraries in the United States, and its images are widely
8 recognized as the best in its field.

9 13. EVOX owns or controls the copyrights in tens of thousands of digital
10 images and photographs under the United States Copyright laws, and has obtained
11 Certificates of Copyright Registration from the Register of Copyrights for these
12 works. Each copyright registration includes multiple still images, each with their
13 own title, for a specific automobile. A list of the federally registered copyrights
14 which Defendants have infringed by the acts complained of herein is attached as
15 Exhibit A, which is incorporated by reference. A complete list of photographs
16 identified by title and copyright registration number is attached as Exhibit B (the
17 "Copyrighted Photographs"), which is incorporated by reference.

18 14. True and correct copies of the Certificates of Copyright Registration at
19 issue in this case are attached as Exhibit C, which is incorporated by reference.

20 15. EVOX has spent substantial time, money and talent in connection with
21 the production, development and marketing of the Copyrighted Photographs. Its
22 images appear on such websites as Carmax.com and Edmonds.com. EVOX images
23 are sought after because of the high quality, breadth and uniformity of images
24 across all makes and models of automobiles.

25 16. EVOX has a specialized niche in automotive photography. EVOX
26 creates and maintains a comprehensive library of high quality, copyrighted
27 automotive photographs. EVOX licenses others to access and use the copyrighted
28 works in its library. EVOX closely controls the distribution and exhibition of its

1 copyrighted works through licensing agreements. EVOX licenses its copyrighted
 2 works in packages, in other groupings, or on an individual, “a la carte” basis.

3 17. EVOX also owns trademark registrations, including the following
 4 United States Patent and Trademark Office (“PTO”) trademark registration (the
 5 “EVOX Trademarks”).

Trademark	Registration No.	Goods/services
EVOX	3,765,883	Photography, audio and video recording services in the field of automotive imaging in international class 41
EVOX IMAGES	3,649,661	Stock photography services, namely, leasing reproduction rights of photographs and transparencies to others in international class 45

14
 15 18. The EVOX Trademarks are registered on the Principal Register of the
 16 PTO pursuant to 15 U.S.C. §1051, and these registrations are valid, subsisting,
 17 enforceable, and incontestable. True and correct copies of the Certificates of
 18 Trademark Registration for the EVOX Trademarks from the Trademark Electronic
 19 Search System of the PTO are attached as Exhibit D, which is incorporated by
 20 reference.

21 19. EVOX has developed a very successful business licensing its library of
 22 copyrighted automotive photographs. EVOX has used the EVOX Trademarks in
 23 connection with its advertising, promotion, sale and offering for sale of its goods
 24 and services nationwide. EVOX’s products and services are known and recognized
 25 by the EVOX Trademarks.

26 20. EVOX has used the EVOX mark and trade name continuously since
 27 1995 nationwide, in interstate commerce, either alone or in conjunction with other
 28 words and marks, to identify EVOX as the source of high quality goods and

1 services in its field.

2 21. EVOX has used the EVOX IMAGES mark continuously since 2006
3 nationwide, in interstate commerce, either alone or in conjunction with other words
4 and marks, to identify EVOX as the source of high quality goods and services in its
5 field.

6 **The EVOX-Yahoo! License Agreement**

7 22. In November 2014, EVOX granted Yahoo! a limited license to use,
8 display and host the Copyrighted Photographs on Yahoo!’s properties subject to the
9 express terms of the license agreement, along with a limited license to use the
10 EVOX Trademarks only as necessary under the express terms of the license
11 agreement (the “EVOX License”).

12 **Defendants’ Unauthorized Use of the Copyrighted Photographs and EVOX**
13 **Trademarks**

14 23. On or about April 4, 2016, Yahoo! cancelled the EVOX License via
15 email to EVOX.

16 24. EVOX acknowledged the cancellation of the EVOX License.

17 25. On May 4, 2016, the EVOX License terminated, and with it, Yahoo!’s
18 rights to the Copyrighted Photographs and EVOX Trademarks.

19 26. EVOX has not since entered into any license agreements for the
20 Copyrighted Photographs and EVOX Trademarks with Yahoo!.

21 27. Under the express terms of the EVOX License, upon termination,
22 Yahoo! lost all rights to use and display EVOX Copyrighted Photographs and
23 EVOX Trademarks, and had 90 days in which it was required to “use reasonable
24 efforts to remove the Licensor Content and Licensor Brand Features from public
25 display.” This gave Yahoo! until August 5, 2016, to remove all EVOX works from
26 its properties.

27 28. Despite knowing that their rights to the Copyrighted Photographs and
28 EVOX Trademarks terminated on May 4, 2016, and that it was then required to

1 take those works down within 90 days, on information and belief, Yahoo!
2 undertook no (or virtually no) measures whatsoever to remove the EVOX
3 Copyrighted Photographs and EVOX Trademarks from its properties. Instead,
4 Yahoo! continued to use and display the Copyrighted Photographs and EVOX
5 Trademarks after August 5, 2016 without permission or authorization, including,
6 but not limited to on Yahoo!'s Tumblr website.

7 29. Yahoo!'s Tumblr website is a public image sharing website. Yahoo!
8 made the Copyrighted Photographs available to any user of Tumblr to copy or link
9 any number of images to their own Tumblr webpages or other social media
10 websites.

11 30. On information and belief, Yahoo! continued to use and display the
12 Copyrighted Photographs and EVOX Trademarks without permission or
13 authorization until at least June 2019.

14 31. EVOX first discovered Yahoo!'s continued use and display of the
15 Copyrighted Photographs and EVOX Trademarks on Yahoo!'s Tumblr page in the
16 Fall of 2016. EVOX then proceeded to conduct an investigation and sought to
17 preserve evidence related to this massive infringement. That investigation and the
18 process of interviewing, selecting and retaining counsel took many months to
19 complete.

20 32. EVOX never consented to or authorized Yahoo!'s continued use of the
21 Copyrighted Photographs and EVOX Trademarks.

22 33. To the contrary, on or about March 5, 2018, after learning of Yahoo!'s
23 continued unauthorized use, EVOX wrote to Yahoo! demanding that Yahoo!
24 immediately cease use of EVOX's intellectual property. A true and correct copy of
25 this letter is attached as Exhibit E, and is incorporated by reference.

26 34. Subsequently, despite Yahoo!'s assurances that it had removed all
27 EVOX works from Yahoo! image servers and websites, EVOX discovered that its
28 Copyrighted Photographs and EVOX Trademark were still being made publically

1 displayed and available by Yahoo!. On information and belief, Yahoo! continued to
2 use the Copyrighted Photographs and EVOX Trademarks for months after receipt
3 of the cease-and-desist letter, though it informed EVOX that it had taken these
4 works down. Yahoo! was and is a sophisticated online media company that, on
5 information and belief, regularly enters into licensing agreements with third parties
6 for content. It knew and knows how to remove copyrighted content on its properties
7 so that the public may no longer access it. In this instance, it either intentionally or
8 recklessly chose not to take action to remove EVOX's Copyrighted Photographs
9 from its massive set of online properties. For approximately the last year, EVOX
10 has been forced to point out various Yahoo! properties that continued to be
11 accessible by the public and display the Copyrighted Photographs.

12 35. Defendants' unlawful and unauthorized distribution, transmission,
13 copying, public display and use of the Copyrighted Photographs and EVOX
14 Trademarks has irreparably harmed EVOX's copyrights, trademarks and exclusive
15 rights in the Copyrighted Photographs and EVOX Trademarks. EVOX is without
16 an adequate remedy at law with respect to such harm and injury.

17 **COUNT ONE**

18 **(Copyright Infringement, 17 U.S.C. §§ 501 *et seq.*)**

19 36. Paragraphs 1 through 33 are incorporated by reference in support of
20 this claim for relief.

21 37. Each of the Copyrighted Photographs is an original pictorial work and
22 constitutes copyrightable subject matter under 17 U.S.C. §§ 101 and 102.

23 38. After May 4, 2016, Yahoo! was not, and is not, licensed or otherwise
24 authorized to distribute, transmit, copy or display the Copyrighted Photographs.

25 39. Yahoo! has infringed EVOX's copyrights in the Copyrighted
26 Photographs through the distribution, transmission, copying or public display of the
27 Copyrighted Photographs on, among other places, the Yahoo! Tumblr websites and
28 their servers after May 4, 2016, when their rights were terminated.

1 40. On information and belief, the infringement of EVOX’s copyrights by
2 Yahoo! was willful. Yahoo! was aware that its license to use the Copyrighted
3 Photographs had expired. Yahoo!’s continued distribution, transmission, copying,
4 public display, and use of the Copyrighted Photographs, and Yahoo!’s refusal to
5 cease distribution and display of the Copyrighted Photographs after receiving notice
6 evidence Yahoo!’s willful infringement. At a minimum, Yahoo!’s actions were
7 reckless.

8 41. EVOX has been damaged by the willful infringement of Yahoo! in a
9 sum to be determined.

10 42. On information and belief, Yahoo! can and may continue its infringing
11 activities unless restrained and enjoined. EVOX’s remedy at law is not by itself
12 adequate to compensate it for the harm inflicted and threatened by Yahoo!.

13 **COUNT TWO**

14 **(Trademark Infringement, 15 U.S.C. §1114)**

15 43. Paragraphs 1 through 40 are incorporated by reference in support of
16 this claim for relief.

17 44. The EVOX Trademarks are valid registered service marks pursuant to
18 15 U.S.C. §§ 1052, 1053.

19 45. After May 4, 2016, Yahoo! was not, and is not licensed or authorized
20 to use the EVOX Trademarks.

21 46. Yahoo! has used EVOX Trademarks without consent or authorization
22 in connection with the sale and offering for sale of its product and services to the
23 public.

24 47. Yahoo! has infringed the EVOX Trademarks through the use of the
25 EVOX Trademarks in conjunction with Yahoo!’s business.

26 48. On information and belief, Yahoo!’s unauthorized use of the EVOX
27 Trademarks was and is likely to cause confusion, mistake or deception among the
28 parties’ customers, prospective customers, other businesses and individuals who

1 deal with Yahoo! and EVOX.

2 49. Yahoo! used the EVOX Trademarks with knowledge of EVOX's
3 rights and without permission, and on information and belief, Yahoo!'s
4 infringement was willful and deliberate.

5 50. EVOX has been damaged by Yahoo!'s trademark infringement in a
6 sum to be determined.

7 51. EVOX's remedy at law is not by itself adequate to compensate it for
8 the harm inflicted by Yahoo!

9 **PRAYER FOR RELIEF**

10 WHEREAS, EVOX prays for relief as follows:

11 A. For an entry of permanent injunctive relief enjoining and restraining
12 Yahoo! and their officers, directors, agents, servants, employees, licensees and all
13 other persons in privity or acting in concert with them from doing any of the
14 following:

- 15 i. distributing, transmitting, copying, publically displaying, or
16 creating derivative works of any of the Copyrighted Photographs;
17 ii. doing business, in any capacity, using the EVOX Trademarks or
18 any confusingly similar marks;
19 iii. using the EVOX Trademarks, or any confusingly similar marks,
20 in connection with the manufacture, design, import, distribution,
21 sale, or offering for sale of goods or services, including the use on
22 any and all packaging, promotional material, advertisements,
23 point-of-sale materials and websites;
24 iv. falsely or inaccurately describing or designating the origin or
25 other facts related to any goods or services, or passing off any
26 goods or services in any manner that is likely to cause confusion,
27 mistake or deception as to the affiliation, connection, sponsorship
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or association of Defendants or any of their respective goods or services with EVOX;

v. engaging in false designation and advertising;

B. For an award, at EVOX’s election, pursuant to 17 U.S.C. §504, of either (1) the actual damages suffered by EVOX with respect to past infringement, plus any additional profits of Yahoo! that are attributable to the infringement that are not taken into account in computing the actual damages; or (2) statutory damages as provided by Section 504 (c). In no event are such damages less than \$10 million;

C. For a finding that the infringement by Yahoo! was willful, and for an award to EVOX, at its election, of statutory damages against Defendants for willfully committing infringement as provided by 17 U.S.C. §504;

D. For an award of trebled damages, for the profits and actual damages proven at trial, pursuant to 15 U.S.C. §1117(a) because of the willfulness of Yahoo!’s conduct described in this Complaint;

E. For an award of EVOX’s attorneys’ fees, expenses and costs, pursuant to 17 U.S.C. §505 and 15 U.S.C. §1117(a);

F. For an award to EVOX of pre-and post-judgment interest;

G. For an award to EVOX of such other and further relief as the Court deems just and proper.

Dated: March 26, 2020

CROWELL & MORING LLP

/s/ Kent B. Goss
Kent B. Goss
Attorneys for Plaintiff
EVOX Productions, LLC

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DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38(b), Plaintiff EVOX demands a trial by jury on all issues triable by jury.

Dated: March 26, 2020

CROWELL & MORING LLP

/s/ Kent B. Goss
Kent B. Goss
Attorneys for Plaintiff
EVOX Productions, LLC