

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO.**

ABS-CBN CORPORATION, a  
Philippines corporation,  
ABS-CBN FILM PRODUCTIONS, INC.  
d/b/a Star Cinema, a Philippines corporation,  
and ABS-CBN INTERNATIONAL, a  
California corporation,

Plaintiffs

vs.

JONATHAN DELA CRUZ A/K/A  
JOHN CRUZ D/B/A  
PINOY-TV-REPLAY.COM  
and DOES 1-100,

Defendants.

/

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

ABS-CBN CORPORATION, ABS-CBN FILM PRODUCTIONS, INC. d/b/a Star Cinema, and ABS-CBN INTERNATIONAL (hereinafter collectively, “Plaintiffs” or “ABS-CBN”), by and through their counsel, hereby sue Defendant, JONATHAN DELA CRUZ a/k/a JOHN CRUZ d/b/a PINOY-TV-REPLAY.COM (“Defendant Dela Cruz”) and DOES 1-10, and allege as follows:

**NATURE OF THE CASE**

1. This is an action for willful trademark and copyright infringement. ABS-CBN is the largest media and entertainment company in the Philippines. With its twelve large production studios, ABS-CBN produces over 2,430 hours of original content every year for its numerous television stations, including daily drama teleseries, drama anthologies, movies,

musical and variety shows, game shows, reality shows, news programs, current affairs programs, documentaries, music video 24/7 (Myx), AM talk radio with DJ live on-screen (DZMM), FM radio shows with DJ live on-screen (MOR), and public affairs programs. Every day, ABS-CBN's programming is broadcast worldwide through its agreements with dozens of cable companies' premium channels, telecom provider partnerships, Internet subscription services, and through its own 24-hour cable and satellite service, which offers pay-per-view programming.

2. Like many creators of movies and TV content, ABS-CBN is confronted with the online infringement of the intellectual property in its programs and brands by pirate websites operating under a variety of domain names, including the pinoy-tv-replay.com website operated by Defendant Dela Cruz. Through his pinoy-tv-replay.com website, Defendant Dela Cruz holds out to the public that he has ABS-CBN's copyrighted content and performs ABS-CBN's copyrighted content over the Internet in order to illegally profit from ABS-CBN's intellectual property, without ABS-CBN's consent.

3. On information and belief, Defendant Dela Cruz provides on-demand streaming performances of full-length versions of ABS-CBN's TV shows and movies through his pinoy-tv-replay.com website. On information and belief, Defendant Dela Cruz facilitates access to the infringing content which is streamed through the pinoy-tv-replay.com, rather than users of the websites uploading the content. On information and belief, Defendant Dela Cruz often displays the latest content to his servers within minutes or hours of the original broadcast in the Philippines. Further, on information and belief, Defendant Dela Cruz controls the organization and presentation of the content by providing links to ABS-CBN shows, promoting and advertising the content as ABS-CBN's, including through the use of ABS-CBN's marks, and streaming the shows for users' viewing through his pinoy-tv-replay.com website.

4. On information and belief, Defendant Dela Cruz profits from his infringement at an enormous cost to ABS-CBN. Defendant Dela Cruz is responsible for many instances of infringement of ABS-CBN's copyrighted works, causing substantial harm to ABS-CBN, which has made significant investments of money, time and creative energies to produce the content and to develop the technical platform, branding, promotions and sales, and goodwill around its products and distribution channels. Moreover, because ABS-CBN operates worldwide, including through partnership agreements with premium cable channels, through its own Internet pay subscription service, and through its own 24-hour pay-per-view programming, free streaming of ABS-CBN's content by Defendant Dela Cruz deprives ABS-CBN of substantial revenue that would otherwise be derived from consumers; deprives ABS-CBN's legitimate digital and broadcast advertisers and sponsors from having their ads and commercials viewed by these consumers; diverts customers worldwide from its subscription services and confuses consumers as to the source and legitimacy of its content and distribution channels; harms ABS-CBN's ability to continue to build out its paying customer base, particularly in international markets; and interferes with and harms ABS-CBN's distribution and sponsorship agreements, hurting its and its partners' profits and reputations.

5. Defendant Dela Cruz's pinoy-tv-replay.com website is a classic example of a pirate operation, having no regard whatsoever for the rights of ABS-CBN and willfully infringing ABS-CBN's content. As a result, ABS-CBN requires this Court's intervention if any meaningful stop is to be put to Defendant Dela Cruz's piracy.

#### **JURISDICTION AND VENUE**

6. This is an action seeking damages and injunctive relief for trademark counterfeiting and infringement, and false designation of origin under the Lanham Act; common

law unfair competition; 15 U.S.C. §§ 1051 *et seq.*; and seeking injunctive relief for copyright infringement under the Copyright Act, 17 U.S.C. §§ 101 *et seq.* The copyrighted works at issue herein are foreign works produced in the Republic of the Philippines [“the Philippines”], a Berne Convention signatory. As such, an action may be initiated under 17 U.S.C. § 411(a).

7. This Court has subject matter jurisdiction pursuant to 17 U.S.C. §§ 101 *et seq.*, 15 U.S.C. §§ 1114 and 1125(a), and 28 U.S.C. §§ 1331, 1338(a) & (b).

8. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over the state law claims, because the claims are so related to the trademark and copyright claims in this action over which this Court has original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

9. Defendant Dela Cruz is subject to personal jurisdiction in this District because he directly targets business activities towards consumers in the State of Florida through his advertisement and promotion of the availability of pirated ABS-CBN copyrighted content via his unauthorized Internet-based content distribution service, including through the use of ABS-CBN’s trademarks. Defendant Dela Cruz’s interactive pinoy-tv-replay.com website is accessible in this District and Defendant Dela Cruz infringes ABS-CBN’s trademarks and copyrights in this District. Finally, Defendant Dela Cruz causes harm to ABS-CBN’s business within this District by diverting customers in this District and within the State of Florida to his unauthorized Internet-based content distribution service through, at least, the website operating under the pinoy-tv-replay.com domain name.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Defendant Dela Cruz is a non-resident alien and thus may be sued in “any judicial district in which any defendant is subject to the Court’s personal jurisdiction with respect to such an

action,” as set forth above. Venue is also proper in this District pursuant to 28 U.S.C. § 1391(c) because a “defendant not resident in the United States may be sued in any judicial district.”

Finally, Venue is proper in this Court pursuant to 28 U.S.C. § 1400(a), which states that “civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights ... may be instituted in the district which the defendant or his agent resides or may be found.” Defendant Dela Cruz may be found may be found in this district as he is subject to personal jurisdiction.

### **THE PLAINTIFFS**

11. ABS-CBN Corporation is a public Philippines corporation.
12. ABS-CBN Film Productions, Inc. is a wholly-owned subsidiary of ABS-CBN Corporation.
13. ABS-CBN International is a wholly-owned subsidiary of ABS-CBN Corporation.
14. Plaintiff, ABS-CBN International, is, and at all times relevant hereto has been, the registered owner of the following trademarks, which are valid and registered on the Principal Register of the United States Patent and Trademark Office (the “ABS-CBN Registered Marks”):

<b>Trademark</b>	<b>Registration Number</b>	<b>Registration Date</b>	<b>Class / Services</b>
<b>ABS-CBN</b>	2,334,131	March 28, 2000	IC 038 – television broadcasting services via satellite and cable
<b>THE FILIPINO CHANNEL</b>	1,994,383	Aug. 20, 1996	IC 038 – Cable television broadcast IC 041 – television show production and programming.
<b>TFC</b>	3,733,072	Jan. 5, 2010	IC 038 – Cable television broadcast IC 041 – television show production and programming.

The ABS-CBN Registered Marks are used in conjunction with high quality services in the

categories identified above. True and correct copies of the Certificates of Registration for the ABS-CBN Registered Marks are attached hereto as Exhibit “1.”

15. The ABS-CBN Registered Marks have been used in interstate commerce for many years to identify and distinguish ABS-CBN’s high quality services, including, but not limited to, broadcast distribution services, for an extended period of time and serve as symbols of ABS-CBN’s quality, reputation, and goodwill.

16. The ABS-CBN Registered Marks have never been assigned or licensed to Defendant Dela Cruz.

17. The ABS-CBN Registered Marks are symbols of ABS-CBN’s quality, reputation, and goodwill and has never been abandoned.

18. ABS-CBN International is also, and at all times relevant hereto has been, the owner of all rights in and to the following common law trademark (the “ABS-CBN Common Law Trademark”):



19. The ABS-CBN Common Law Trademark is used in conjunction with high quality products and services, including broadcasting distribution services.

20. The ABS-CBN Common Law Trademark has been used in interstate commerce for many years to identify and distinguish ABS-CBN’s high quality broadcasting distribution services and serves as a symbol of ABS-CBN’s quality, reputation, and goodwill.

21. The ABS-CBN Common Law Trademark has never been assigned or licensed to the Defendant Dela Cruz.

22. The ABS-CBN Common Law Trademark is a symbol of ABS-CBN's quality, reputation, and goodwill and has never been abandoned.

23. Together, the ABS-CBN Registered Marks and the ABS-CBN Common Law trademark are referred to herein as the "ABS-CBN Marks." ABS-CBN Corporation and ABS-CBN Film Productions, Inc. share exclusive rights to the ABS-CBN Marks with ABS-CBN International. Moreover, ABS-CBN Corporation and ABS-CBN Film Productions, Inc. are licensed to use and enforce the ABS-CBN Marks.

24. ABS-CBN Corporation is the owner of the copyrights in and to the TV shows and movies specifically identified in Exhibit 3 [the "Copyrighted Works"]. ABS-CBN International and ABS-CBN Film Productions, Inc. share exclusive rights to the Copyrighted Works with ABS-CBN Corporation. Moreover, ABS-CBN International and ABS-CBN Film Productions, Inc. are licensed to distribute, perform and enforce their rights to the Copyrighted Works.

25. ABS-CBN is the largest media and entertainment company in the Philippines. All of ABS-CBN's TV shows and movies are initially produced in the Philippines and then aired through its broadcast facilities or regional theaters in the Philippines. Simultaneous with, or after that original broadcast, ABS-CBN's Filipino-centric content is then distributed throughout the world via customer-paid subscriptions, including through numerous cable companies' premium channels and telecom provider partnerships, such as with DirecTV, Time Warner Cable, Cox Communications, Comcast, AT&T, Verizon Services Corp., Braintree Cable, Cablevision, CC Communications, Centurytel, Champion Broadband, Charter, Duncan Cable TV, En-Touch, Frontier Communications, GCI Cable, Golden Rain Foundation, Groton Utilities, Hawaiian

Telecom, ICable, KPU CommVision, MCV, MTA Communications, Norwood Light Dept., OpenBand Media, OSN, Phonoscope, Rainier Cable TV, RCN, Rogers, San Bruno Cable, Service Electric, Shaw, Starhub, Summit Broadband, SureWest, Tacoma Public Utilities, TVMax, Wave Broadband, Windjammer Cable, Zito Media, and many more.

26. In addition, ABS-CBN's content is distributed by ABS-CBN through Internet subscription services, such as TFC.TV and IWANTV.COM.PH, as well as through their own 24-hour cable and satellite service TFC (The Filipino Channel) and TFC IPTV, which offers Pay-Per-View programming. Most recently, on July 15, 2014, ABS-CBN launched its new TFC.TV design. The redesigned portal is meant to provide its customers with improved navigation and easier access to the latest ABS-CBN shows and content. In addition, it also includes a new Premium subscription package, which includes over 160+ Entertainment shows, 50+ News shows, 8+ Live shows, and 300+ Movies.

27. ABS-CBN has expended substantial time, money, and other resources developing, advertising, and promoting the ABS-CBN Marks and copyrighted works.

28. As a result of ABS-CBN's efforts, members of the consuming public readily identify services and content bearing and promoted by ABS-CBN under the ABS-CBN Marks as high quality broadcasting services and content.

29. Genuine and authorized ABS-CBN services and content are widely legitimately advertised and promoted by ABS-CBN and its authorized partners. Over the course of the past five to seven years, visibility on the Internet, particularly via Internet search engines such as Google, Yahoo! And Bing has become increasingly important to ABS-CBN's overall marketing and consumer education efforts. Thus, ABS-CBN expends significant monetary resources on Internet marketing and consumer education, including search engine optimization ("SEO")

strategies. Those strategies allow ABS-CBN and its authorized partners to fairly and legitimately educate consumers about the value associated with the ABS-CBN brand and the content promoted thereunder.

30. ABS-CBN creates and distributes content serving the worldwide Filipino community. This includes the populace of the Philippines, estimated at 92.3 million persons, as well as the substantial overseas community, which is estimated at between 10.5 million and 13.5 million persons. See <http://www.census.gov.ph/>; [http://en.wikipedia.org/wiki/Overseas\\_Filipino](http://en.wikipedia.org/wiki/Overseas_Filipino). Countries with significant resident Filipino populations overseas include: United States (3,494,281 persons); Saudi Arabia (1,267,658); UAE (931,562); Canada (852,401); Malaysia (686,547); Australia (391,705); Japan (243,136); United Kingdom (218,777); Kuwait (213,638); Qatar (200,016); Hong Kong (195,128); Singapore (184,498); and Italy (172,148). *Id.*; see also Commission on Filipinos Overseas, *Stock Estimate of Overseas Filipinos* (as of Dec. 2012) ([http://cfo.gov.ph/images/stories/pdf/2012\\_Stock\\_Estimate\\_of\\_Filipinos\\_Overseas.pdf](http://cfo.gov.ph/images/stories/pdf/2012_Stock_Estimate_of_Filipinos_Overseas.pdf)).

31. The United States hosts the largest population of Filipinos outside the Philippines. *Id.* Filipinos are estimated by the U.S. State Department to be the second-largest Asian-American group in the country. See [http://en.wikipedia.org/wiki/Overseas\\_Filipino](http://en.wikipedia.org/wiki/Overseas_Filipino); U.S. Department of State, *U.S. Relations With the Philippines, Bureau of East Asian and Pacific Affairs Fact Sheet* (Jan. 31, 2014) (<http://www.state.gov/r/pa/ei/bgn/2794.htm>). In addition, Tagalog is the fifth most spoken language in the U.S. See [http://en.wikipedia.org/wiki/Overseas\\_Filipino](http://en.wikipedia.org/wiki/Overseas_Filipino). Moreover, Florida is the state with the ninth largest Filipino American population. See [http://en.wikipedia.org/wiki/Demographics\\_of\\_Filipino\\_Americans](http://en.wikipedia.org/wiki/Demographics_of_Filipino_Americans). Florida is a critical market in the United States for ABS-CBN's business given the size of the State's Filipino community.

**THE DEFENDANT**

32. On information and belief, Defendant Dela Cruz is an individual who resides in the Philippines. On information and belief, Defendant Dela Cruz is the registrant, owner, and/or operator of the pinoy-tv-replay.com domain name and its associated website.

33. On information and belief, Defendant Dela Cruz is doing business as and through the domain name identified as pinoy-tv-replay.com.

34. On information and belief, Defendant Dela Cruz personally directed and participated in, exercised control over, and benefited from the specific infringing and infringement-inducing conduct described herein, which resulted in the infringement of ABS-CBN's copyrights and trademarks. This includes, but is not limited to, operating the pinoy-tv-replay.com website to profit from its infringing activities; and doing so in a way intended to frustrate enforcement efforts through the use of aliases.

35. On information and belief, Defendants Does 1-10 are individuals, partnerships, or unincorporated business associations which operate through domain names registered with registrars in the United States and elsewhere, and are comprised of individuals and/or business entities of unknown makeup.

36. Defendant Dela Cruz has the capacity to be sued pursuant to Federal Rule of Civil Procedure 17(b). Defendant Dela Cruz targets his business activities, in part, towards consumers throughout the United States, including within this District, through the operation of his fully interactive website operating under the pinoy-tv-replay.com domain name. Defendant Dela Cruz is directly and personally contributing to, inducing and engaging in trademark and copyright infringement.

37. ABS-CBN is presently unaware of the true names of Does 1-10 and will amend this Complaint upon discovery of the identities of such fictitious Defendants.

38. On information and belief, Defendant Dela Cruz is the past and present conscious force behind the operation of the Internet website operating under the pinoy-tv-replay.com domain name.

39. On information and belief, Defendant Dela Cruz will continue to register, transfer, and/or acquire new domain names for the purpose of infringing ABS-CBN's trademarks and copyrights unless preliminarily and permanently enjoined.

40. As part of his overall infringement and counterfeiting scheme, Defendant Dela Cruz is, on information and belief, employing SEO strategies based, in large measure, upon an illegal use of counterfeits and infringements of the ABS-CBN Marks. Specifically, On information and belief, Defendant Dela Cruz is using counterfeits of ABS-CBN's famous name and the ABS-CBN Marks in order to make his website offering and performing pirated ABS-CBN content appear more relevant and attractive to search engines across an array of search terms. By his actions Defendant Dela Cruz is assisting in creating an illegal marketplace operating parallel to ABS-CBN's legitimate marketplace for authorized distribution of ABS-CBN produced content. Defendant Dela Cruz is causing harm to ABS-CBN by depriving ABS-CBN of its right to fairly compete for space within search engine results and reducing the visibility of genuine ABS-CBN promotions on the World Wide Web.

41. Defendant Dela Cruz's Internet-based website business is an illegal operation, infringing on the intellectual property rights of ABS-CBN and others. On information and belief, Defendant Dela Cruz operates the pinoy-tv-replay.com website which serves only one purpose – to function as commercial online hub for publicly providing performances of popular

copyrighted content, including many of ABS-CBN's copyrighted works, over the Internet to many thousands of users, without authorization or license. On information and belief, Defendant Dela Cruz effects this illegal scheme, in part, through the draw to consumers of ABS-CBN's Marks on the pinoy-tv-replay.com website, in the metatags in the source code of the pinoy-tv-replay.com website in order to achieve higher rankings in search engines, and by advertising through social media the presence of ABS-CBN's content on his website.

42. On information and belief, Defendant Dela Cruz uses and has registered, established, purchased and/or maintained the pinoy-tv-replay.com domain name and the website operating thereunder. On information and belief, Defendant Dela Cruz has knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing the pinoy-tv-replay.com domain name used in connection with the infringement. On information and belief, Defendant Dela Cruz has anonymously registered and maintained the pinoy-tv-replay.com domain name for the purpose of evading liability for his illegal activities.

43. Defendant Dela Cruz's business name, pinoy-tv-replay.com (and any other domain names used in connection with infringing ABS-CBN's trademarks and copyrights), is an essential component of Defendant Dela Cruz's infringing activities. The pinoy-tv-replay.com domain name itself is a significant part of the means by which Defendant Dela Cruz furthers his infringing scheme and causes harm to ABS-CBN in that he causes and effects the infringement as described below.

**FACTUAL ALLEGATIONS**

***A. Defendant Dela Cruz's Pinoy-tv-replay.com Domain and Associated Website.***

44. On information and belief, Defendant Dela Cruz is infringing ABS-CBN's trademarks through his copying, use, promotion, and/or performance of ABS-CBN's TV shows and movie content.

45. On information and belief, Defendant Dela Cruz is personally and directly responsible for copying and facilitating access to ABS-CBN's content on his pinoy-tv-replay.com website and allowing copies of ABS-CBN's TV shows and movie videos to be performed through Defendant Dela Cruz's pinoy-tv-replay.com website.

46. On information and belief, Defendant Dela Cruz advertises ABS-CBN's works to the public, including through the use of ABS-CBN's trademarks. *See* Exhibits 2, 3, 4, and 5. Defendant Dela Cruz uses the ABS-CBN Marks, without authorization, to attract consumer traffic to his website and promotes the infringing video content available thereon.

47. ABS-CBN's representatives have viewed the infringements of the ABS-CBN Marks as well as infringements of ABS-CBN's copyrighted content on Defendant Dela Cruz's pinoy-tv-replay.com website in the Southern District of Florida.

48. Further, on information and belief, Defendant Dela Cruz uses the ABS-CBN Marks, without authorization, to falsely suggest the infringing video content embedded on the pinoy-tv-replay.com website for streaming is authorized, genuine content approved, endorsed, and sponsored by ABS-CBN. *See* Exhibits 2, 3, and 5.

49. On information and belief, Defendant Dela Cruz's pinoy-tv-replay.com website streams and performs many of ABS-CBN's copyrighted works. *See* Exhibits 2 and 3. Defendant Dela Cruz's pinoy-tv-replay.com website also promises to offer a live stream channel

of the upcoming Floyd Mayweather v. Manny Pacquiao boxing match, which will be offered by ABS-CBN and other legitimate entertainment companies through various platforms, including but not limited to cable providers, digital subscriptions and IPTV for a pay-per-view fee. *See* Exhibit 4.

50. Defendant Dela Cruz's pinoy-tv-replay.com website also provides "Replays" of ABS-CBN's copyrighted works and advertises them as such. *See* Exhibits 2 and 3.

51. On information and belief, Defendant Dela Cruz's streaming of the video content also enables users to copy the TV shows and movies.

52. On information and belief, Defendant Dela Cruz's pinoy-tv-replay.com website is a "closed website," meaning that it does not allow users to make additions or changes to the website, such that the content streamed through the website can only be provided by the website's operator and not uploaded by viewers. On information and belief, Defendant Dela Cruz's also inserts the links provided on the pinoy-tv-replay.com website through which users view ABS-CBN's video content in a player window on the pinoy-tv-replay.com website. When a user clicks on the link to one of ABS-CBN's TV shows or movies, Defendant Dela Cruz's pinoy-tv-replay.com website then streams the full-length version of the video. This includes, but is not limited to, the ABS-CBN's TV shows and movies identified in Exhibits 2 and 3.

53. On information and belief, the large inventory of popular entertainment content available on Defendant Dela Cruz's pinoy-tv-replay.com website, including full-length copies of daily programming and archived shows – all available at the click of a button and often made available within minutes or hours of the original broadcast – is provided in order to attract users to the infringing content.

54. By advertising, promoting and performing the copyrighted works, and encouraging, facilitating and assisting in the viewing and copying of the TV shows and movies, on information and belief, based on publically available sources, Defendant Dela Cruz's pinoy-tv-replay.com website attracts many thousands of page views each day.

55. On information and belief, the infringement-driven traffic increases the volume of online advertising impressions and transactions, and thereby increases online advertising revenues and enables Defendant Dela Cruz to charge advertisers higher rates, and reap significant profits thereby. Moreover, the wrongfully obtained consumer traffic increases the value of the pinoy-tv-replay.com domain name. In these ways, Defendant Dela Cruz's business model critically depends on attracting users to view ABS-CBN's highly-valued copyrighted works.

56. On information and belief, Defendant Dela Cruz derives revenue from ad impressions and the sale of highly valuable user analytic data from and to the ad services that are operating on the website.

57. On information and belief, Defendant Dela Cruz infringes, induces, causes, and/or materially contributes to the infringing activity of his users by promoting, through the text of the website, the presence and availability of copies of ABS-CBN's copyrighted content. *See* Exhibits 2 and 3.

58. On information and belief, Defendant Dela Cruz infringes, induces, causes, and/or materially contributes to the infringing activity of his users by promoting, through the use of ABS-CBN's trademarks and specific identification of shows and movies as ABS-CBN's, the presence and availability of copies of ABS-CBN's content. *See* Exhibits 2, 3, and 5.

59. On information and belief, Defendant Dela Cruz infringes, induces, causes, and/or materially contributes to the infringing activity of his users by promoting, through Facebook, the presence and availability of copies of ABS-CBN's copyrighted content. *See* Exhibit 5.

60. On information and belief, Defendant Dela Cruz infringes, and induces, causes and/or materially contributes to the infringing activity of his users by promoting, through metatags (aka "Keywords") designed to increase the pinoy-tv-replay.com website's relevance to queries for ABS-CBN's content in search engines and thus increases the number of people who click through to the pinoy-tv-replay.com website.

61. Defendant Dela Cruz infringes, induces, causes and/or materially contributes to the infringing activity of his users by frequently updating his inventory of content, often very soon after the broadcast in the Philippines, in order to tap into the known market for pirated Filipino-centric content and constantly promote to consumers the presence and availability of copies of ABS-CBN's content, including the latest episodes of TV shows and movies.

62. Because Defendant Dela Cruz causes the infringing content to be displayed on his pinoy-tv-replay.com website and be streamed, on information and belief, he could stop the infringement at any point.

63. However, Defendant Dela Cruz does not implement any means to prevent infringement because to do so would defeat the very purpose for which the pinoy-tv-replay.com domain name and associated website exist – *i.e.*, to provide copyrighted TV shows and movies with Filipino content by infringing upon the trademarks of the largest media company in the Philippines.

64. Defendant Dela Cruz has actual and constructive knowledge, or should have knowledge, of his and his users' infringement of ABS-CBN's copyrighted works for at least the

reasons that: (i) he inserts and provides daily links to, organizes by show title, and performs the infringing content for his users; (ii) he advertises and promotes the content, including through the use of the ABS-CBN Marks, on the pinoy-tv-replay.com website and through social media, and through search engine optimization and meta tags; (iii) as the largest media and entertainment company in the Philippines, ABS-CBN's content is highly popular in Filipino communities and Defendant Dela Cruz profits as a direct result of broadcasting that content.

### **CLAIMS FOR RELIEF**

#### **Count One -- Trademark Counterfeiting and Infringement**

65. ABS-CBN repeats and re-alleges every allegation contained in paragraphs 1 through 64 as though fully set forth herein.

66. This is an action for trademark counterfeiting and infringement against Defendant Dela Cruz based on his use of counterfeits, copies and/or colorable imitations of the ABS-CBN Marks on his pinoy-tv-replay.com website, which facilitates consumers' access to infringements of ABS-CBN's copyrighted materials (the "pirated content").

67. Specifically, Defendant Dela Cruz is continually promoting and otherwise advertising his illegal broadcast distribution facilitation service using the ABS-CBN Marks, without authorization. *See* Exhibit 2, 3 and 5.

68. Defendant Dela Cruz's counterfeiting and infringing use of the ABS-CBN Marks is likely to cause and actually is causing confusion, mistake, and deception among members of the general public as to the origin and quality of the pirated content as well as the legitimacy of Defendant Dela Cruz's illegal broadcast distribution facilitation service.

69. Defendant Dela Cruz's unlawful actions have caused and are continuing to cause unquantifiable damages to ABS-CBN and are unjustly enriching Defendant Dela Cruz at ABS-CBN's expense.

70. Defendant Dela Cruz's above-described illegal actions constitute counterfeiting and infringement of the ABS-CBN Marks in violation of ABS-CBN's rights under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

71. ABS-CBN has suffered and will continue to suffer irreparable injury due to Defendant Dela Cruz's above described activities if Defendant Dela Cruz is not temporarily, preliminarily and permanently enjoined.

**Count Two -- False Designation of Origin Pursuant to § 43(a) of the Lanham Act**

72. ABS-CBN repeats and re-alleges every allegation contained in paragraphs 1 through 71 as though fully set forth herein.

73. Defendant Dela Cruz's advertisement and promotion of his illegal distribution facilitation service for the pirated content is being conducted using exact copies of the ABS-CBN Marks and is widely advertised and promoted throughout the United States, including within many of ABS-CBN's important business markets such as the State of Florida.

74. Defendant Dela Cruz is using the ABS-CBN Marks to advertise and promote his illegal distribution service for the pirated content in violation of ABS-CBN's intellectual property rights and to intentionally confuse consumers into believing the pirated content and his broadcast distribution service are sponsored and endorsed by ABS-CBN. *See* Exhibit 2, 3, and 5. Defendant Dela Cruz's unauthorized use of the ABS-CBN Marks is designed to falsely suggest that his activities are sponsored and/or endorsed by ABS-CBN. Defendant Dela Cruz's unlawful use of the ABS-CBN Marks is designed to make his service appear legitimate in order

to attract a larger number of viewers which results in larger advertising revenues for Defendant Dela Cruz.

75. Defendant Dela Cruz, on information and belief, has used, in connection with his advertisement and promotion of his illegal broadcast distribution facilitation service, false designations of origin and false descriptions and representations, including words or symbols which tend to falsely describe or represent such distribution services and have facilitated access to the general viewing public with full knowledge of the falsity of such designations of origin and such descriptions and representations, all to ABS-CBN's detriment.

76. Defendant Dela Cruz has authorized infringing uses of the ABS-CBN Marks in the advertisement and promotion of his illegal broadcast distribution facilitation service for pirated content. Defendant Dela Cruz has misrepresented to members of the consuming public that the pirated content to which Defendant Dela Cruz is facilitating access is genuine and authorized content of ABS-CBN, and that his broadcast distribution facilitation service for such content is sponsored and/or endorsed by ABS-CBN.

77. Additionally, Defendant Dela Cruz is using counterfeits and infringements of the ABS-CBN Marks in order to unfairly compete with ABS-CBN and others for space within search engine organic results, thereby depriving ABS-CBN of a valuable marketing tool which would otherwise be available to ABS-CBN and reducing the visibility of ABS-CBN's legitimate, genuine content on the World Wide Web.

78. Defendant Dela Cruz's above-described actions are in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

79. ABS-CBN has no adequate remedy at law, and has sustained injury and damages caused by Defendant Dela Cruz's conduct. Absent an entry of an injunction by this Court, ABS-

CBN will continue to suffer irreparable injury to its goodwill and business reputation, as well as monetary damages.

**Count Three -- Common Law Unfair Competition**

80. ABS-CBN repeats and re-alleges every allegation contained in paragraphs 1 through 79 as though fully set forth herein.

81. This is an action against Defendant Dela Cruz based on his (i) promotion, advertisement, distribution, and facilitation of access to the pirated content using marks which are identical, both visually and phonetically, to the ABS-CBN Marks and the (ii) creation and maintenance of an illegal ongoing forum in which viewers may access public performances of and copy the pirated content, operating parallel to ABS-CBN's own Internet pay subscription service through which ABS-CBN promotes its genuine content, in violation of Florida's common law of unfair competition.

82. Specifically, and as described above, Defendant Dela Cruz is promoting, advertising and otherwise facilitating access to and copying of the pirated content using Plaintiffs' ABS-CBN Marks for the purpose of creating a veneer of legitimacy for Defendant Dela Cruz's operation. *See* Exhibit 2 and 3. Also, for the purpose of earning a profit at the ABS-CBN's expense, Defendant Dela Cruz is using counterfeits and infringements of the ABS-CBN Marks to unfairly compete with ABS-CBN and others for (i) space in search engine results across an array of search terms and (ii) visibility on the World Wide Web.

83. ABS-CBN is suffering damages and irreparable injury as a result of Defendant Dela Cruz's wrongful actions.

**Count Four -- Direct Infringement of Copyright**

84. ABS-CBN repeats and realleges every allegation contained in paragraphs 1 through 83 as if fully set forth herein.

85. ABS-CBN Corporation is the owner of unregistered copyrights in numerous TV shows and movies first produced and aired in the Philippines, a signatory to the Berne Convention, including but not limited to the works identified in Exhibits 2 and 3. On information and belief, Defendant Dela Cruz has copied, performed and/or distributed these works through his pinoy-tv-replay.com website as part of an ongoing daily illegal enterprise that, without injunctive relief, will continue through the pinoy-tv-replay.com website as well as through other domains owned now or in the future by Defendant Dela Cruz.

86. Defendant Dela Cruz is directly liable for infringing ABS-CBN's copyrighted works under the Copyright Act, 17 U.S.C. §§ 106(1), (3), (4) & 501.

87. Without authorization from ABS-CBN, or right under law, Defendant Dela Cruz has directly infringed ABS-CBN's copyrighted works by copying, performing and/or distributing the works through his pinoy-tv-replay.com website to public users worldwide and in this District. *See Exhibits 2 and 3.*

88. Defendant Dela Cruz has actual and constructive knowledge, or should have knowledge, of his infringement of ABS-CBN's copyrighted works for at least the reasons that: (i) he inserts and provides links to, organizes by show title, and performs the infringing content, and does so for the purpose of users' viewing of pirated content; (ii) he advertises and promotes the content, including through the use of ABS-CBN's marks, on his pinoy-tv-replay.com website, through social media, and through search engine optimization and meta tags; (iii) as the largest media and entertainment company in the Philippines, ABS-CBN's content is highly

popular in Filipino communities and Defendant Dela Cruz profits as a direct result of broadcasting that content.

89. The foregoing acts of infringement have been willful, intentional, and purposeful, in disregard of and indifferent to ABS-CBN's rights.

90. As a direct and proximate result of Defendant Dela Cruz's infringement of ABS-CBN's exclusive rights, ABS-CBN is entitled to actual damages and Defendant Dela Cruz's profits pursuant to 17 U.S.C. § 504(b).

91. ABS-CBN is entitled to injunctive relief, as set forth below, because of the continuing infringement of many of ABS-CBN's works and because of the significant threat of future infringement as evidenced herein.

**Count Five -- Contributory Infringement of Copyright**

92. ABS-CBN repeats and realleges every allegation contained in paragraphs 1 through 91 as if fully set forth herein.

93. On information and belief, users of Defendant Dela Cruz's pinoy-tv-replay.com website have directly infringed ABS-CBN's copyrights, including without limitation those copyrighted works identified in Exhibits 2 and 3, by copying, performing and/or distributing the works owned by ABS-CBN, without authorization, or right under law, in violation of the Copyright Act, 17 U.S.C. §§ 106(1), (3), (4) & 501.

94. Defendant Dela Cruz is contributorily liable for his users' direct infringement of ABS-CBN's copyrighted works in violation of the Copyright Act.

95. Defendant Dela Cruz has actual and constructive knowledge, or should have knowledge, of his users' infringement of ABS-CBN's copyrighted works for at least the reasons that: (i) he inserts and provides links to, organizes by show title, and performs the infringing

content, and do so for the purpose of users' viewing; (ii) he advertises and promotes the content, including through the use of ABS-CBN's marks, on the pinoy-tv-replay.com website, through social media, and through search engine optimization and meta tags; and (iii) as the largest media and entertainment company in the Philippines, ABS-CBN's content is highly popular in Filipino communities and Defendant Dela Cruz profits as a direct result of broadcasting that content.

96. On information and belief, Defendant Dela Cruz induces, causes, and/or materially contributes to the infringing activity of his users for all the reasons stated herein, including but not limited to because Defendant Dela Cruz: (i) advertises the presence and availability of "free" Filipino content; (ii) promotes the presence and availability of Filipino content and, specifically, ABS-CBN's content, through (a) the text on his pinoy-tv-replay.com website, (b) through the use of ABS-CBN's trademarks and specific identification of shows and movies as ABS-CBN's, (c) through social media advertising, such as on Facebook, and (d) search engine optimization and meta tags; (iii) displaying pirated content and organizing that content for ready access through menus and folders by show title; (iv) inserting the links on his websites directing users where to view the content; (v) streaming the infringing content to users for viewing; (vi) frequently updating his inventory of content, often very soon after the broadcast in the Philippines, in order to tap into the known market for pirate Filipino-centric content and constantly to feed the consumers' desire for that content; (vii); enable users to copy the works; and (viii) because by promoting and providing the content, Defendant Dela Cruz drives more traffic to his pinoy-tv-replay.com website to increase the profits he reaps from advertising and other revenue.

97. Defendant Dela Cruz has the right and ability to supervise and control his pinoy-tv-replay.com website and the users' infringing activity as set forth above. Because Defendant Dela Cruz caused the infringed content to be loaded on his "closed website" and be streamed on

his pinoy-tv-replay.com website, he could stop the infringement at any point. Defendant Dela Cruz has not ceased his infringement because his revenue is dependent on driving traffic to his infringing content.

98. Defendant Dela Cruz derives a financial benefit directly attributable to his users' infringement of ABS-CBN's copyrights. Popular, copyrighted works act as a draw that attracts users and advertising to the pinoy-tv-replay.com domain name and associated website, resulting in revenues from advertising impressions tied to page views and other sources.

99. Defendant Dela Cruz has taken affirmative steps to foster infringement by creating his pinoy-tv-replay.com website and streaming the content, viewed through video player embedded on his website, with the object of promoting the illegal viewing of ABS-CBN's copyrighted TV shows and movies by providing detailed programming directories, with the look and feel of television guides; presentation of the TV shows and movies in association with ABS-CBN as the television network and trademarked titles associated with a telecast; and by promoting his pinoy-tv-replay.com website and the pirated content available thereon through the website itself and social media, such as Facebook. *See Exhibit 2, 3, and 5.*

100. On information and belief, Defendant Dela Cruz does not operate the website in a passive, content-neutral, and automated manner. To the contrary, as set forth above, he controls the selection and provision of the content and is the sole cause making that content available and accessible to his public users. Without the active and material contributions from Defendant Dela Cruz, the infringement complained of herein could not have taken place.

101. Defendant Dela Cruz targets known demand for illegal access to and viewing of copyrighted works in this District and throughout the world.

102. Defendant Dela Cruz is the direct and proximate cause of the harm to ABS-CBN alleged herein.

103. The foregoing acts of infringement by Defendant Dela Cruz have been willful, intentional, and purposeful, in disregard of and indifferent to ABS-CBN's rights.

104. As a direct and proximate result of Defendant Dela Cruz's and his users' infringement of ABS-CBN's exclusive rights, ABS-CBN is entitled to actual damages and Defendant Dela Cruz's profits pursuant to 17 U.S.C. § 504(b).

105. ABS-CBN is entitled to injunctive relief as set forth below, because of the continuing infringement of many of ABS-CBN's works and because the significant threat of future infringement as evidenced herein.

WHEREFORE, Plaintiffs pray for judgment against Defendant Dela Cruz as follows:

A. Entry of temporary, preliminary, and permanent injunctions pursuant to 15 U.S.C. § 1116, 17 U.S.C. § 502(a), and Federal Rule of Civil Procedure 65, enjoining Defendant Dela Cruz, his agents, representatives, servants, employees, and all those acting in concert or participation therewith, including Internet search engines, Web hosts, domain-name registrars, and domain name registries and/or their administrators, from advertising, promoting, performing, copying, broadcasting, performing, and/or distributing any ABS-CBN copyrighted works and/or content that currently exists or which exists in the future; from infringing, counterfeiting, or diluting the ABS-CBN Marks, or any mark similar thereto, in connection with the advertisement, promotion, or distribution of pirated content, from using any logo, trade name or trademark or trade dress that may be calculated to falsely advertise the pirated content of Defendant Dela Cruz as being sponsored by, authorized by, endorsed by, or in any way associated with ABS-CBN; from falsely representing himself as being connected with ABS-CBN, through sponsorship or

association, or engaging in any act that is likely to falsely cause members of the public to believe any pirated content or services of Defendant Dela Cruz are in any way endorsed by, approved by, and/or associated with ABS-CBN; from using any reproduction, counterfeit, infringement, copy or colorable imitation of the ABS-CBN Marks in connection with the publicity, promotion, advertising, or distribution of any pirated content by Defendant Dela Cruz; from affixing, applying, annexing or using in connection with the promotion, distribution, or advertisement of any pirated content, a false description or representation, including words or other symbols tending to falsely describe or represent Defendant Dela Cruz's pirated content as being connected with ABS-CBN, or in any way endorsed by ABS-CBN; from engaging in search engine optimization strategies using colorable imitations of the ABS-CBN name or trademarks; and from otherwise unfairly competing with ABS-CBN.

B. Entry of temporary, preliminary and permanent injunctions pursuant to 28 U.S.C. § 1651(a), The All Writs Act, enjoining Defendant Dela Cruz and all third parties from creating, maintaining, operating, joining, participating in, including providing financial, technical or other support to, the World Wide Web-based illegal marketplace used to copy, distribute, perform, advertise, or promote pirated content bearing counterfeits or infringements of the ABS-CBN Marks and/or copyrights.

C. Entry of an Order pursuant to 28 U.S.C. § 1651(a), The All Writs Act, that, upon ABS-CBN's request, those in privity with Defendant Dela Cruz and those with notice of the injunction, including any Internet search engines, Web hosts, domain-name registrars, and domain name registries and/or their administrators that are provided with notice of the injunction, cease facilitating access to any or all domain names and websites through which

Defendant Dela Cruz engages in the (i) copying, distribution, performance, advertising, and promotion of pirated content or (ii) use the ABS-CBN Marks.

D. Entry of an Order that, upon ABS-CBN's request, the top level domain (TLD) Registry(ies) for the pinoy-tv-replay.com domain name or its administrators place the pinoy-tv-replay.com domain name on Registry Hold status for the remainder of the registration period for any such domain names, thus removing it from the TLD zone files maintained by the Registries or its administrators which link the pinoy-tv-replay.com domain name to the IP addresses where the associated website is hosted.

E. Entry of an Order canceling or deleting, or, at ABS-CBN's election, transferring the pinoy-tv-replay.com domain name and any other domain names used by Defendant Dela Cruz to engage in his infringing activities at issue to ABS-CBN's control so that they may no longer be used for illegal purposes.

G. Entry of an order requiring Defendant Dela Cruz to account to and pay ABS-CBN for all profits and damages resulting from Defendant Dela Cruz's trademark infringing and counterfeiting and unfairly competitive activities and that the award to ABS-CBN be trebled, as provided for under 15 U.S.C. § 1117, or, at ABS-CBN's election with respect to Count I, that ABS-CBN be awarded statutory damages from Defendant Dela Cruz in the amount of two million dollars (\$2,000,000.00) per each counterfeit trademark used, as provided by 15 U.S.C. § 1117(c)(2) of the Lanham Act.

I. Entry of an award of ABS-CBN's costs and reasonable attorneys' fees and investigative fees associated with bringing this action.

J. Entry of an Order requiring Defendant Dela Cruz to pay ABS-CBN for all profits and damages sustained by ABS-CBN resulting from Defendant Dela Cruz's copyright

infringement, together with the appropriate interest thereon; that Defendant Dela Cruz be required to account to ABS-CBN for, disgorge to ABS-CBN, and to pay ABS-CBN, all the gains, profits, savings, and advantages realized by Defendant Dela Cruz from his acts of copyright infringement as described above.

K. Entry of an Order requiring all funds, up to and including the total amount of judgment, in payment accounts or advertising revenue accounts used in connection with the pinoy-tv-replay.com domain name, and any other accounts, to be surrendered to ABS-CBN's in partial satisfaction of the monetary judgment entered herein.

L. Entry of an order requiring Defendant Dela Cruz to pay prejudgment interest according to law.

M. Entry of an order for such other and further relief as the Court may deem proper and just.

### **DEMAND FOR A JURY TRIAL**

In accordance, with Fed. R. Civ. P. 38, ABS-CBN demands a trial by jury on all issues so triable.

DATED: April 20, 2015.

Respectfully submitted,

STEPHEN M. GAFFIGAN, P.A.

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