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9
10 Attorneys for Plaintiff
Stephens Media LLC

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**
13

14 STEPHENS MEDIA LLC, a Nevada limited-
15 liability company,

16 Plaintiff,

17 v.

18 CITIHEALTH, L.L.C., a Nevada limited-
19 liability company,

20 Defendant.

Case No.: 2:09-cv-2285

COMPLAINT

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22 Plaintiff Stephens Media LLC (“Stephens”) complains as follows against CitiHealth,
23 L.L.C., a Nevada limited-liability company (“CitiHealth”):
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1 **NATURE OF ACTION**

2 1. This is an action for mark infringement under Section 32 of the Lanham
3 Trademark Act of 1946 (“Lanham Act”) (15 U.S.C. §1114), false designation of origin under
4 Section 43(a) of the Lanham Act (15 U.S.C. §1125(a)), mark dilution under Section 43(c) of the
5 Lanham Act (15 U.S.C. §1125(c)), mark infringement under Nevada common law, mark dilution
6 under Nevada Revised Statutes 600.435, misappropriation of licensable commercial properties
7 under Nevada common law, and unjust enrichment, all arising from CitiHealth’s unauthorized
8 use of the mark BEST OF LAS VEGAS (the “Infringing Mark”). As a result of the unlawful
9 actions set forth herein, Stephens seeks injunctive relief and the recovery of actual damages,
10 statutory damages, treble damages, special damages, costs of suit, attorneys’ fees, and/or such
11 other relief as the Court may deem appropriate.

12 **PARTIES**

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14 2. Stephens is, and has been at all times relevant to this lawsuit, a Nevada limited-
15 liability company with its principal place of business in Nevada.

16 3. Stephens is, and has been at all times relevant to this lawsuit, in good standing
17 with the Secretary of State of Nevada.

18 4. CitiHealth is, and has been at all times relevant to this lawsuit, a Nevada limited-
19 liability company with its principal place of business in Nevada.

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21 **JURISDICTION**

22 5. This Court has original jurisdiction over Stephens’ First, Second, and Third
23 Causes of Action pursuant to §39 of the Lanham Act (15 U.S.C. §1121) because Stephens’ First,
24 Second, and Third Causes of Action arise under the Lanham Act.

25 6. This Court has supplemental jurisdiction over Stephens’ Fourth, Fifth, Sixth, and
26 Seventh Causes of Action pursuant to 28 U.S.C. §1367 because Stephens’ Fourth, Fifth, Sixth,
27 and Seventh Causes of Action are so related to Stephens’ First, Second, and Third Causes of
28 Action that Stephens’ Fourth, Fifth, Sixth, and Seventh Causes of Action form part of the same
case or controversy under Article III of the United States Constitution.

1 13. Stephens is the assignee of certain trademarks and service marks registered with
2 the United States Patent and Trademark Office (the “USPTO”) as follows (collectively, the
3 “Stephens Marks”):

- 4 a. THE BEST OF LAS VEGAS and Design, Registration Number 2410131,
5 International Class 16, with respect to a section of a newspaper featuring
6 consumer preferences and recommendations regarding people, places, goods,
7 services, restaurants, entertainment, arts, sports, and recreation in the Las
8 Vegas area, first used in commerce with respect to such scope of use on or
9 about March 24, 1996 and registered with the USPTO on December 5, 2000, a
10 printout of the USPTO’s Trademark Application and Registration Retrieval
11 database (“TARR”) status for which, current as of December 2, 2009, is
12 attached hereto as Exhibit 1-A;
- 13 b. THE BEST OF LAS VEGAS and Design, Registration Number 2519098,
14 International Class 16, with respect to newspaper articles, periodicals, and
15 pamphlets featuring general information about people, places, goods, services,
16 restaurants, entertainment, arts, sports, and recreation, and also with respect to
17 paper award certificates, first used in commerce with respect to such scope of
18 use on or about March 24, 1996 and registered with the USPTO on December
19 18, 2001, a printout of the TARR status for which, current as of December 2,
20 2009, is attached hereto as Exhibit 1-B;
- 21 c. BEST OF LAS VEGAS, Registration Number 2572556, International Class
22 16, with respect to newspaper articles, periodicals, and pamphlets featuring
23 general information about people, places, goods, services, restaurants,
24 entertainment, arts, sports, and recreation, and also with respect to paper
25 award certificates, first used in commerce with respect to such scope of use on
26 or about February 12, 1984 and registered with the USPTO on May 28, 2002,
27 a printout of the TARR status for which, current as of December 2, 2009, is
28 attached hereto as Exhibit 1-C;

- 1 d. BEST OF LAS VEGAS, Registration Number 2410129, International Class
2 35, with respect to promoting the sale of goods and services of others by
3 conducting and disseminating business surveys featuring consumer
4 preferences and recommendations regarding people, places, goods, services,
5 restaurants, entertainment, arts, sports, and recreation in the Las Vegas area,
6 first used in commerce with respect to such scope of use on or about February
7 12, 1984 and registered with the USPTO on December 5, 2000, a printout of
8 the TARR status for which, current as of December 2, 2009, is attached hereto
9 as Exhibit 1-D; and
- 10 e. BEST OF LAS VEGAS, Registration Number 2410130, International Class
11 42, with respect to providing a web site featuring business and consumer
12 preferences and recommendations regarding people, places, goods, services,
13 restaurants, entertainment, arts, sports, and recreation in the Las Vegas area,
14 first used in commerce with respect to such scope of use on or about October
15 31, 1997 and registered with the USPTO on December 5, 2000, a printout of
16 the TARR status for which, current as of December 2, 2009, is attached hereto
17 as Exhibit 1-E.

18 Stephens also owns a number of other federally-registered marks incorporating the words LAS
19 VEGAS, including LAS VEGAS REVIEW-JOURNAL and variants thereof.

20 14. By virtue of Stephens' long-standing, extensively-advertised use of the Stephens
21 Marks in the Las Vegas area, the Stephens Marks have gained secondary meaning primarily
22 denoting Stephens as the Mark's source of origin.

23 15. In or about December 2008, CitiHealth published and caused to be distributed in
24 the Las Vegas area the January 2009 issue of the periodical *Healthy Living* (the "Infringing
25 Issue").

26 16. On the cover of the Infringing Issue appear the words BEST OF LAS VEGAS,
27 contained within a contrasting-colored circle, with an appearance similar to that of Plaintiffs'
28 marks THE BEST OF LAS VEGAS and Design (the "Infringing Mark").

1 17. In or about December 2008, CitiHealth caused to be published on CitiHealth's
2 site on the World Wide Web, www.citihealth.com ("CitiHealth's Website"), an exact visual
3 representation of each page the Infringing Issue, including the cover of the Infringing Issue
4 depicting the Infringing Mark.

5 18. CitiHealth is not affiliated with Stephens or any subsidiary of Stephens, and
6 Stephens has not authorized CitiHealth to use in any manner the Stephens Marks or any variants
7 thereof, including, but not limited to, the Infringing Mark.

8 19. CitiHealth used the Infringing Mark in interstate commerce in connection with
9 CitiHealth's goods and services, specifically, on CitiHealth's publications and website.

10 20. Consumers and the public will improperly conclude that Stephens sponsors and/or
11 is affiliated with CitiHealth as a result of such consumers and the public observing the Infringing
12 Mark on CitiHealth's publications and CitiHealth's Website.

13 21. The goodwill inuring to Stephens from the Stephens Marks is tarnished by any
14 implication of apparent affiliation between Stephens and CitiHealth, and the respective websites
15 and publications of Stephens and CitiHealth.

16
17 **FIRST CAUSE OF ACTION**

18 **MARK INFRINGEMENT UNDER THE LANHAM ACT, 15 U.S.C. §1114(1)(a)**

19 22. Stephens repeats and realleges the allegations set forth in Paragraphs 1 through 21
20 above.

21 23. CitiHealth is using and/or have used the Stephens Marks in commerce in
22 connection with the sale, offering for sale, distribution, and advertising of goods and/or services,
23 with knowledge that CitiHealth's use of the Stephens Marks in commerce constitutes the use of a
24 counterfeit mark or designation (the "Infringing Use").

25 24. The Infringing Use is likely to cause confusion, cause mistake, or deceive
26 consumers and the public with respect to the goods and/or services offered in commerce by
27 CitiHealth.

28 25. CitiHealth has willfully engaged in the Infringing Use with knowledge that the
Infringing Use constitutes an infringement of the Stephens Marks.

1 26. The Infringing Use has damaged and will continue to damage the reputation and
2 goodwill of Stephens established in connection with the Stephens Marks, in violation of §32 of
3 the Lanham Act (15 U.S.C. §1114).

4 27. Stephens has sustained actual damages as a direct and proximate result of the
5 Infringing Use, and CitiHealth is liable to Stephens for the amount of those actual damages
6 pursuant to §35 of the Lanham Act (15 U.S.C. §1117).

7 28. CitiHealth has profited as a direct and proximate result of the Infringing Use, and
8 CitiHealth is liable to Stephens for the amount of those profits pursuant to §35 of the Lanham
9 Act (15 U.S.C. §1117).

10 29. CitiHealth is liable to Stephens for three times Stephens' actual damages or
11 CitiHealth's profits resulting from the Infringing Use, whichever is greater, plus prejudgment
12 interest on such amount; or, in the alternative, to statutory damages not exceeding \$2,000,000 per
13 type of goods or services sold, offered for sale, or distributed by CitiHealth under the Infringing
14 Mark, pursuant to §35 of the Lanham Act (15 U.S.C. §1117) as amended by the Prioritizing
15 Resources and Organization for Intellectual Property Act of 2008.

16 30. CitiHealth's acts as alleged herein, and the ongoing direct results of those acts,
17 have caused and will continue to cause irreparable harm to Stephens in an amount Stephens
18 cannot ascertain, leaving Stephens with no adequate remedy at law.

19 31. Unless CitiHealth is preliminarily and permanently enjoined from further
20 infringement by CitiHealth of the Stephens Marks, Stephens will be irreparably harmed, and
21 Stephens is thus entitled to preliminary and permanent injunctive relief against further
22 infringement by CitiHealth of the Stephens Marks, pursuant to §34 of the Lanham Act (15
23 U.S.C. §1116).

24 32. Stephens has been required to retain an attorney to prosecute this action, and
25 CitiHealth is liable to Stephens for Stephens' attorney fees incurred in connection with the
26 prosecution of this action, pursuant to §35 of the Lanham Act (15 U.S.C. §1117).

27 33. Stephens has incurred costs of suit in connection with bringing this action, and
28 CitiHealth is liable to Stephens for those costs of suit pursuant to §35 of the Lanham Act (15
U.S.C. §1117).

SECOND CAUSE OF ACTION

FALSE DESIGNATION OF ORIGIN UNDER THE LANHAM ACT, 15 U.S.C. §1125(a)

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4 34. Stephens repeats and realleges the allegations set forth in Paragraphs 1 through 33
5 above.

6 35. The Infringing Use constitutes a false designation of origin and a false description
7 and representation of CitiHealth's business and goods and/or services, which has damaged and
8 will continue to damage the reputation and goodwill of Stephens established in connection with
9 the Stephens Marks, in violation of §43(a) of the Lanham Act (15 U.S.C. §1125(a)).

10 36. Stephens has sustained actual damages as a direct and proximate result of the
11 Infringing Use, and CitiHealth is liable to Stephens for the amount of those actual damages
12 pursuant to §35 of the Lanham Act (15 U.S.C. §1117).

13 37. CitiHealth has profited as a direct and proximate result of the Infringing Use, and
14 CitiHealth is liable to Stephens for the amount of those profits pursuant to §35 of the Lanham
15 Act (15 U.S.C. §1117).

16 38. CitiHealth is liable to Stephens for up to three times Stephens' actual damages,
17 plus CitiHealth's profits, resulting from the Infringing Use.

18 39. CitiHealth's acts as alleged herein, and the ongoing direct results of those acts,
19 have caused and will continue to cause irreparable harm to Stephens in an amount Stephens
20 cannot ascertain, leaving Stephens with no adequate remedy at law.

21 40. Unless CitiHealth is preliminarily and permanently enjoined from further
22 infringement by CitiHealth of the Stephens Marks, Stephens will continue to be irreparably
23 harmed, and Stephens is thus entitled to preliminary and permanent injunctive relief against
24 further infringement by CitiHealth of the Stephens Marks, pursuant to §34 of the Lanham Act
25 (15 U.S.C. §1116).

26 41. Stephens has been required to retain an attorney to prosecute this action, and
27 CitiHealth is liable to Stephens for Stephens' attorney fees incurred in connection with the
28 prosecution of this action, pursuant to §35 of the Lanham Act (15 U.S.C. §1117).

1 42. Stephens has incurred costs of suit in connection with bringing this action, and
2 CitiHealth is liable to Stephens for those costs of suit pursuant to §35 of the Lanham Act (15
3 U.S.C. §1117).
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THIRD CAUSE OF ACTION

MARK DILUTION UNDER THE LANHAM ACT, 15 U.S.C. §1125(c)

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3 43. Stephens repeats and realleges the allegations set forth in Paragraphs 1 through 42
4 above.

5 44. During the nearly 30 years in which the Stephens Marks have been in continuous
6 use and subject to extensive marketing, the Stephens Marks have acquired a high level of
7 distinctiveness and fame in connection with Stephens' provision of goods and services under the
8 Stephens Marks.

9 45. The Stephens Marks were famous when CitiHealth began using the Infringing
10 Mark in interstate commerce.

11 46. CitiHealth's wrongful use of the Infringing Mark was willful, and CitiHealth
12 willfully intended to trade on the recognition of the Stephens Marks when CitiHealth used the
13 Infringing Mark.

14 47. CitiHealth commenced CitiHealth's use of the Infringing Mark after October 6,
15 2006.

16 48. CitiHealth's use of the Infringing Mark, which is identical or nearly identical to
17 the Stephens Marks, causes dilution of the distinctive quality of the Stephens Marks, and such
18 dilution has damaged and will continue to damage the reputation and goodwill of Stephens
19 established in connection with the Stephens Marks, in violation of §43(c) of the Lanham Act (15
20 U.S.C. §1125(c)).

21 49. Stephens has sustained actual damages as a direct and proximate result of the
22 Infringing Use, and CitiHealth is liable to Stephens for the amount of those actual damages
23 pursuant to §35 of the Lanham Act (15 U.S.C. §1117).

24 50. CitiHealth has profited as a direct and proximate result of the Infringing Use, and
25 CitiHealth is liable to Stephens for the amount of those profits pursuant to §35 of the Lanham
26 Act (15 U.S.C. §1117).

27 51. CitiHealth is liable to Stephens for up to three times Stephens' actual damages,
28 plus CitiHealth's profits, resulting from the Infringing Use.

1 70. CitiHealth's wrongful use of the Infringing Mark was willful, and CitiHealth
2 willfully intended to trade on the recognition of the Stephens Marks when CitiHealth
3 commenced use of the Infringing Mark.

4 71. CitiHealth commenced CitiHealth's use of the Infringing Mark after December 5,
5 2000.

6 72. CitiHealth's use of the Infringing Mark, which is identical or nearly identical to
7 the Stephens Marks, causes dilution of the capacity of the Stephens Marks to identify and
8 distinguish goods and/or services, and such dilution has damaged and will continue to damage
9 the reputation and goodwill of Stephens established in connection with the Stephens Marks, in
10 violation of NRS 600.435.

11 73. CitiHealth has profited as a direct and proximate result of CitiHealth's willful
12 Infringing Use, and CitiHealth is liable to Stephens for the amount of those profits, pursuant to
13 NRS 600.435(3).

14 74. CitiHealth is liable to Stephens for up to three times Stephens' actual damages,
15 plus CitiHealth's profits, resulting from the Infringing Use, pursuant to NRS 600.435(3).

16 75. CitiHealth's acts as alleged herein, and the ongoing direct results of those acts,
17 have caused and will continue to cause irreparable harm to Stephens in an amount Stephens
18 cannot ascertain, leaving Stephens with no adequate remedy at law.

19 76. Unless CitiHealth is preliminarily and permanently enjoined from further
20 infringement by CitiHealth of the Stephens Marks, Stephens will be irreparably harmed, and
21 Stephens is thus entitled to preliminary and permanent injunctive relief against further
22 infringement by CitiHealth of the Stephens Marks, pursuant to NRS 600.435(3).

23 77. Stephens has been required to retain an attorney to prosecute this action, and
24 CitiHealth is liable to Stephens for Stephens' attorney fees incurred in connection with the
25 prosecution of this action, pursuant to NRS 600.435(3).

26 78. Stephens has incurred costs of suit in connection with bringing this action, and
27 CitiHealth is liable to Stephens for those costs of suit pursuant to NRS 600.435(3).
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SIXTH CAUSE OF ACTION

**MISAPPROPRIATION OF LICENSABLE COMMERCIAL PROPERTY UNDER
NEVADA COMMON LAW**

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4 79. Stephens repeats and realleges the allegations set forth in Paragraphs 1 through 78
5 above.

6 80. Stephens has invested significant time, effort, and money in creating, publicizing,
7 and protecting the Stephens Marks and developing the valuable goodwill arising from and
8 associated with the Stephens Marks (collectively the “Commercial Property”).

9 81. Stephens has licensed and continues to license the Commercial Property in return
10 for value.

11 82. The Infringing Mark is a commercial property that may be licensed for value.

12 83. CitiHealth does not have and has never had the legal right, authority, or license to
13 use the Infringing Mark.

14 84. CitiHealth’s wrongful use of the Infringing Mark, undertaken without authority
15 from Stephens, deprived Stephens of the commercial value of the Infringing Mark.

16 85. Stephens has sustained and will continue to sustain damages as a direct and
17 proximate result of CitiHealth’s misappropriation of Stephens’ licensable Commercial Property,
18 and CitiHealth is liable to Stephens for the amount of those present and future damages.

19 86. CitiHealth’s acts as alleged herein, and the ongoing direct results of those acts,
20 have caused and will continue to cause irreparable harm to Stephens in an amount Stephens
21 cannot ascertain, leaving Stephens with no adequate remedy at law.

22 87. Stephens is entitled to preliminary and permanent injunctive relief against further
23 misappropriation by CitiHealth of Stephens’ licensable Commercial Property.

24 88. Stephens has been required to retain an attorney to prosecute this action, and
25 CitiHealth is liable to Stephens for Stephens’ attorney fees incurred in connection with the
26 prosecution of this action.

27 89. Stephens has incurred costs of suit in connection with bringing this action, and
28 CitiHealth is liable to Stephens for those costs of suit.

1 **SEVENTH CAUSE OF ACTION**

2 **UNJUST ENRICHMENT**

3 90. Stephens repeats and realleges the allegations set forth in Paragraphs 1 through 89
4 above.

5 91. Stephens owns the Stephens Marks.

6 92. CitiHealth does not have and has never had authority to use the Stephens Marks.

7 93. CitiHealth's use of the Infringing Mark was in furtherance of CitiHealth's own
8 economic gain by directing consumers and the public to CitiHealth's publications and websites.

9 94. CitiHealth accepted and retained all of the profits and benefits of CitiHealth's
10 unauthorized use of the Infringing Mark.

11 95. Stephens is entitled to recover an amount by which CitiHealth has been unjustly
12 enriched through CitiHealth's unauthorized use of the Infringing Mark.

13 96. As a result of CitiHealth's acts as alleged herein, Stephens has suffered and will
14 continue to suffer damage to Stephens' business, goodwill, reputation, and profits, while
15 CitiHealth profits at Stephens' expense.

16 **PRAYER FOR RELIEF**

17 Stephens requests that this Court grant Stephens' claims for relief herein as follows:

18 1. Preliminarily and permanently enjoin and restrain CitiHealth, and CitiHealth's
19 officers, agents, servants, employees, attorneys, parents, subsidiaries, related
20 companies, partners, and all persons acting for, by, with, through, or under
21 CitiHealth, from:

- 22 a. Directly or indirectly infringing the Stephens Marks by marketing,
23 offering, selling, disposing of, licensing, leasing, transferring, displaying,
24 advertising, reproducing, exhibiting, exploiting, or causing the marketing,
25 offering, selling, disposing, licensing, leasing, transferring, displaying,
26 advertising, reproducing, exhibiting, exploiting, developing,
27 manufacturing, or linking of any goods or services derived from or bearing
28

1 the Stephens Marks, or to order, direct, participate in, or assist in any such
2 activity; and

3 b. Using in any manner the Stephens Marks and any term or terms likely to
4 cause confusion therewith, including, without limitation, the Infringing
5 Mark (BEST OF LAS VEGAS) and any variant thereof, in connection
6 with the retrieval of data or information on CitiHealth's other goods or
7 services, or in connection with the advertising or promotion of
8 CitiHealth's goods, services, or websites, or ordering, directing,
9 participating in, or assisting in any such use;

10 2. Direct CitiHealth to preserve, retain, and deliver to Stephens' counsel in hard
11 copies or electronic copies:

12 a. All evidence and documentation relating in any way to CitiHealth's use of
13 the Infringing Mark and the Stephens Marks, in any form, including,
14 without limitation, all such evidence and documentation relating to the
15 Infringing Issue, to CitiHealth's Website, or to any other periodicals or
16 websites relating to the Infringing Mark;

17 b. All evidence and documentation relating to the names and addresses
18 (whether electronic mail addresses or otherwise) of any person with whom
19 CitiHealth has communicated regarding CitiHealth's use of the Infringing
20 Mark;

21 c. All financial evidence and documentation relating to the Infringing Issue;
22 and

23 d. All financial evidence and documentation relating to CitiHealth's Website,
24 and any services, products, and/or advertising that appear or are offered on
25 or through CitiHealth's Website, to the extent such financial evidence and
26 documentation relates to CitiHealth's use of the Infringing Mark;

27 3. Direct CitiHealth to file with this Court and serve upon Stephens' counsel, within
28 30 days after entry of injunctive relief against CitiHealth, a report in writing,

1 under oath, setting forth in detail the manner and form in which CitiHealth
2 complied with such injunction, pursuant to 15 U.S.C. §1116(a);

- 3 4. Enjoin CitiHealth from engaging in any further unlawful and/or wrongful acts as
4 alleged herein, including, without limitation, mark infringement, false designation
5 of origin, or mark dilution as set forth in the Lanham Act, 15 U.S.C. §1051 *et*
6 *seq.*, and any mark infringement, mark dilution, misappropriation of commercial
7 property, and unjust enrichment in violation of Nevada law;
- 8 5. Direct CitiHealth to produce an accounting of CitiHealth's profits derived through
9 any of the acts alleged herein;
- 10 6. Award Stephens CitiHealth's profits derived from the use of the Infringing Mark
11 and three times Stephens' damages suffered by reason of CitiHealth's willful and
12 wrongful acts, and/or, pursuant to 15 U.S.C. §1117, award Stephens statutory
13 damages of no less than \$1,000.00 as a result of CitiHealth's wrongful acts,
- 14 7. Award Stephens costs, disbursements, and attorneys' fees incurred in bringing
15 this action;
- 16 8. Award Stephens pre- and post-judgment interest in accordance with applicable
17 law; and
- 18 9. Grant Stephens such other relief as this Court deems appropriate.
- 19

20 **DEMAND FOR JURY TRIAL**

21 Stephens requests a trial by jury pursuant to Fed.R.Civ.P. 38.

22 Dated this _____ day of November, 2009.

23 GIBSON LOWRY BURRIS LLP

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