

1 STEVEN A. GIBSON, ESQ.
Nevada Bar No. 6656
2 sgibson@gibsonlowry.com
3 JODI DONETTA LOWRY, ESQ.
Nevada Bar No. 7798
4 jdlowry@gibsonlowry.com

5 GIBSON LOWRY BURRIS LLP
City Center West
6 7201 West Lake Mead Boulevard
Suite 503
7 Las Vegas, Nevada 89128
Telephone 702.541.7888
8 Facsimile 702.541.7899

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 GAULT MILLAU INC., a California
19 corporation,

20 Defendant.
21

Case No.: 2:09-cv-2403

**COMPLAINT and DEMAND FOR JURY
TRIAL**

22
23 Stephens Media LLC (“Stephens”) complains as follows against Gault Millau Inc., a
24 California corporation (“GMI”), on information and belief:
25
26
27
28

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 GMI’s unauthorized use of
8 the mark BEST OF LAS VEGAS (the “Infringing Mark”). As a result of the unlawful actions
9 set forth herein, Stephens seeks injunctive relief and the recovery of actual damages, statutory
10 damages, treble damages, special damages, costs of suit, attorneys’ fees, and/or such other relief
11 as the Court may deem appropriate.

12 **PARTIES**

13
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. GMI is, and has been at all times relevant to this lawsuit, a California corporation
19 with its principal place of business in California.

20
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 Action are so related to Stephens’ First, Second, and Third Causes of Action that
28 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 services, restaurants, entertainment, arts, sports, and recreation, and also
2 with respect to paper award certificates, first used in commerce with
3 respect to such scope of use on or about March 24, 1996 and registered
4 with the USPTO on December 18, 2001;

5 c. BEST OF LAS VEGAS, Registration Number 2572556, International
6 Class 16, with respect to newspaper articles, periodicals, and pamphlets
7 featuring general information about people, places, goods, services,
8 restaurants, entertainment, arts, sports, and recreation, and also with
9 respect to paper award certificates, first used in commerce with respect to
10 such scope of use on or about February 12, 1984 and registered with the
11 USPTO on May 28, 2002;

12 d. BEST OF LAS VEGAS, Registration Number 2410129, International
13 Class 35, with respect to promoting the sale of goods and services of
14 others by conducting and disseminating business surveys featuring
15 consumer preferences and recommendations regarding people, places,
16 goods, services, restaurants, entertainment, arts, sports, and recreation in
17 the Las Vegas area, first used in commerce with respect to such scope of
18 use on or about February 12, 1984 and registered with the USPTO on
19 December 5, 2000; and

20 e. BEST OF LAS VEGAS, Registration Number 2410130, International
21 Class 42, with respect to providing a web site featuring business and
22 consumer preferences and recommendations regarding people, places,
23 goods, services, restaurants, entertainment, arts, sports, and recreation in
24 the Las Vegas area, first used in commerce with respect to such scope of
25 use on or about October 31, 1997 and registered with the USPTO on
26 December 5, 2000.

27 11. Stephens publishes the *Las Vegas Review-Journal* (the “*R-J*”), the newspaper
28 with the largest general daily circulation in the Las Vegas area and in the state of Nevada.

1 12. Annually, Stephens, by and through the *R-J*, publishes newspaper articles and
2 content (the “Newspaper Content”) regarding, and provides a website (the “Website”) featuring,
3 people, places, goods, services, restaurants, entertainment, arts, sports, and recreation in the Las
4 Vegas area under the Stephens Marks, on the basis of responses to a business survey conducted
5 and disseminated by Stephens (the “Survey”).

6 13. The Stephens Marks have been in continuous use since 1984 in the Las Vegas
7 area in connection with the Survey, the Newspaper Content, and the Website.

8 14. By virtue of Stephens’ long-standing, extensively advertised use of the Stephens
9 Marks in the Las Vegas area, the Stephens Marks have gained secondary meaning primarily
10 denoting Stephens, by and through the *R-J*, as the Stephens Marks’ source of origin.

11 15. Stephens’ exclusive right to use the Stephens Marks with respect to the scopes of
12 goods and services identified in the Stephens Marks’ registrations is incontestable.

13 16. GMI maintains a site on the World Wide Web, www.gayot.com (“GMI’s
14 Website”), described thereon by GMI as “the guide to the good life,” providing, in GMI’s words,
15 “restaurant, hotel, travel & other witty reviews.”

16 17. On GMI’s Website appears at least one webpage with a title bar identifying that
17 page as “The Best of Las Vegas Top Restaurants Hotels Travel Guide LAS VEGAS Area
18 Gayot” (the “Infringing Title Bar”), which title bar contains the mark THE BEST OF LAS
19 VEGAS (the “Infringing Mark”).

20 18. On at least one webpage headed by the Infringing Title Bar appear further
21 references to the Infringing Mark and links to reviews of Las Vegas-area hotels, restaurants, live
22 entertainment shows, and other attractions.

23 19. GMI is not affiliated with Stephens or any subsidiary of Stephens, and Stephens
24 has not authorized GMI to use in any manner the Stephens Marks or any variants thereof,
25 including, but not limited to, the Infringing Mark.

26 20. GMI uses the Infringing Mark in interstate commerce in connection with GMI’s
27 services, specifically, on GMI’s Website.

1 21. Consumers and the public will improperly conclude that Stephens sponsors and/or
2 is affiliated with GMI as a result of such consumers and the public observing the Infringing Mark
3 on GMI's Website.

4 22. The goodwill inuring to Stephens from the Stephens Marks is tarnished by any
5 implication of apparent affiliation between Stephens and GMI as a result of GMI's use of the
6 Infringing Mark on GMI's Website.

7
8 **FIRST CAUSE OF ACTION**

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

10 23. Stephens repeats and realleges the allegations set forth in Paragraphs 1 through 22
11 above.

12 24. GMI is using and has used the Stephens Marks in commerce in connection with
13 the sale, offering for sale, distribution, and advertising of services, with knowledge that GMI's
14 use of the Stephens Marks in commerce constitutes the use of a counterfeit mark or designation
15 (the "Infringing Use").

16 25. The Infringing Use is likely to cause confusion, cause mistake, or deceive
17 consumers and the public with respect to the services offered in commerce by GMI.

18 26. GMI has willfully engaged in the Infringing Use with knowledge that the
19 Infringing Use constitutes an infringement of the Stephens Marks.

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

23 28. Stephens has sustained actual damages as a direct and proximate result of the
24 Infringing Use, and GMI is liable to Stephens for the amount of those actual damages pursuant to
25 §35 of the Lanham Act (15 U.S.C. §1117).

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

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

7 31. GMI's acts as alleged herein, and the ongoing direct results of those acts, have
8 caused and will continue to cause irreparable harm to Stephens in an amount Stephens cannot
9 ascertain, leaving Stephens with no adequate remedy at law.

10 32. Unless GMI is preliminarily and permanently enjoined from further infringement
11 by GMI of the Stephens Marks, Stephens will be irreparably harmed, and Stephens is thus
12 entitled to preliminary and permanent injunctive relief against further infringement by GMI of
13 the Stephens Marks, pursuant to §34 of the Lanham Act (15 U.S.C. §1116).

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

17 34. Stephens has incurred costs of suit in connection with bringing this action, and
18 GMI is liable to Stephens for those costs of suit pursuant to §35 of the Lanham Act (15 U.S.C.
19 §1117).

20
21 **SECOND CAUSE OF ACTION**

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

23 35. Stephens repeats and realleges the allegations set forth in Paragraphs 1 through 34
24 above.

25 36. The Infringing Use constitutes a false designation of origin and a false description
26 and representation of GMI's services, which has damaged and will continue to damage the
27 reputation and goodwill of Stephens established in connection with the Stephens Marks, in
28 violation of §43(a) of the Lanham Act (15 U.S.C. §1125(a)).

1 37. Stephens has sustained actual damages as a direct and proximate result of the
2 Infringing Use, and GMI is liable to Stephens for the amount of those actual damages pursuant to
3 §35 of the Lanham Act (15 U.S.C. §1117).

4 38. GMI has profited as a direct and proximate result of the Infringing Use, and GMI
5 is liable to Stephens for the amount of those profits pursuant to §35 of the Lanham Act (15
6 U.S.C. §1117).

7 39. GMI is liable to Stephens for up to three times Stephens' actual damages, plus
8 GMI's profits, resulting from the Infringing Use.

9 40. GMI's acts as alleged herein, and the ongoing direct results of those acts, have
10 caused and will continue to cause irreparable harm to Stephens in an amount Stephens cannot
11 ascertain, leaving Stephens with no adequate remedy at law.

12 41. Unless GMI is preliminarily and permanently enjoined from further infringement
13 by GMI of the Stephens Marks, Stephens will continue to be irreparably harmed, and Stephens is
14 thus entitled to preliminary and permanent injunctive relief against further infringement by GMI
15 of the Stephens Marks, pursuant to §34 of the Lanham Act (15 U.S.C. §1116).

16 42. Stephens has been required to retain an attorney to prosecute this action, and GMI
17 is liable to Stephens for Stephens' attorney fees incurred in connection with the prosecution of
18 this action, pursuant to §35 of the Lanham Act (15 U.S.C. §1117).

19 43. Stephens has incurred costs of suit in connection with bringing this action, and
20 GMI is liable to Stephens for those costs of suit pursuant to §35 of the Lanham Act (15 U.S.C.
21 §1117).

22
23 **THIRD CAUSE OF ACTION**

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

25 44. Stephens repeats and realleges the allegations set forth in Paragraphs 1 through 43
26 above.

27 45. During the over 25 years in which the Stephens Marks have been in continuous
28 use and subject to extensive marketing, the Stephens Marks have acquired a high level of

1 distinctiveness and fame in connection with Stephens' provision of goods and services under the
2 Stephens Marks.

3 46. The Stephens Marks were famous when GMI began using the Infringing Mark in
4 interstate commerce.

5 47. GMI's use of the Infringing Mark, which is identical or nearly identical to the
6 Stephens Marks, causes dilution of the distinctive quality of the Stephens Marks, and such
7 dilution has damaged and will continue to damage the reputation and goodwill of Stephens
8 established in connection with the Stephens Marks, in violation of §43(c) of the Lanham Act (15
9 U.S.C. §1125(c)).

10 48. GMI's acts as alleged herein, and the ongoing direct results of those acts, have
11 caused and will continue to cause irreparable harm to Stephens in an amount Stephens cannot
12 ascertain, leaving Stephens with no adequate remedy at law.

13 49. Unless GMI is preliminarily and permanently enjoined from further infringement
14 by GMI of the Stephens Marks, Stephens will be irreparably harmed, and Stephens is thus
15 entitled to preliminary and permanent injunctive relief against further infringement by GMI of
16 the Stephens Marks, pursuant to §34 of the Lanham Act (15 U.S.C. §1116).

17
18 **FOURTH CAUSE OF ACTION**

19 **MARK INFRINGEMENT UNDER NEVADA COMMON LAW**

20 50. Stephens repeats and realleges the allegations set forth in Paragraphs 1 through 49
21 above.

22 51. The Infringing Use is likely to cause confusion, cause mistake, or deceive
23 consumers and the public with respect to the services offered in commerce by GMI, in violation
24 of the common law of the State of Nevada.

25 52. The Infringing Use has damaged and will continue to damage the reputation and
26 goodwill of Stephens established in connection with the Mark.

27 53. Stephens has sustained actual damages as a direct and proximate result of the
28 Infringing Use, and GMI is liable to Stephens for the amount of those actual damages.

1 54. GMI has profited as a direct and proximate result of the Infringing Use, and GMI
2 is liable to Stephens for the amount of those profits.

3 55. GMI's acts as alleged herein, and the ongoing direct results of those acts, have
4 caused and will continue to cause irreparable harm to Stephens in an amount Stephens cannot
5 ascertain, leaving Stephens with no adequate remedy at law.

6 56. Unless GMI is preliminarily and permanently enjoined from further infringement
7 by Defendants of the Stephens Marks, Stephens will be irreparably harmed, and Stephens is thus
8 entitled to preliminary and permanent injunctive relief against further infringement by GMI of
9 the Stephens Marks.

10 57. Stephens has been required to retain an attorney to prosecute this action, and GMI
11 is liable to Stephens for Stephens' attorney fees incurred in connection with the prosecution of
12 this action.

13 58. Stephens has incurred costs of suit in connection with bringing this action, and
14 GMI is liable to Stephens for those costs of suit.

15
16 **FIFTH CAUSE OF ACTION**

17 **MARK DILUTION UNDER NRS 600.435**

18 59. Stephens repeats and realleges the allegations set forth in Paragraphs 1 through 58
19 above.

20 60. During the over 25 years in which the Stephens Marks have been in continuous
21 use and subject to extensive marketing, the Stephens Marks have acquired a high level of
22 distinctiveness and fame in connection with Stephens' provision of goods and services under the
23 Stephens Marks.

24 61. The Stephens Marks were famous when GMI began using the Infringing Mark in
25 interstate commerce.

26 62. GMI's wrongful use of the Infringing Mark was willful, and GMI willfully
27 intended to trade on the recognition of the Stephens Marks when GMI commenced use of the
28 Infringing Mark.

63. GMI commenced GMI's use of the Infringing Mark after December 5, 2000.

1 64. GMI's use of the Infringing Mark, which is identical or nearly identical to the
2 Stephens Marks, causes dilution of the capacity of the Stephens Marks to identify and distinguish
3 goods and services, and such dilution has damaged and will continue to damage the reputation
4 and goodwill of Stephens established in connection with the Stephens Marks, in violation of
5 NRS 600.435.

6 65. GMI has profited as a direct and proximate result of GMI's willful Infringing Use,
7 and GMI is liable to Stephens for the amount of those profits, pursuant to NRS 600.435(3).

8 66. GMI is liable to Stephens for up to three times Stephens' actual damages, plus
9 GMI's profits, resulting from the Infringing Use, pursuant to NRS 600.435(3).

10 67. GMI's acts as alleged herein, and the ongoing direct results of those acts, have
11 caused and will continue to cause irreparable harm to Stephens in an amount Stephens cannot
12 ascertain, leaving Stephens with no adequate remedy at law.

13 68. Unless GMI is preliminarily and permanently enjoined from further infringement
14 by GMI of the Stephens Marks, Stephens will be irreparably harmed, and Stephens is thus
15 entitled to preliminary and permanent injunctive relief against further infringement by GMI of
16 the Stephens Marks, pursuant to NRS 600.435(3).

17 69. Stephens has been required to retain an attorney to prosecute this action, and GMI
18 is liable to Stephens for Stephens' attorney fees incurred in connection with the prosecution of
19 this action, pursuant to NRS 600.435(3).

20 70. Stephens has incurred costs of suit in connection with bringing this action, and
21 GMI is liable to Stephens for those costs of suit pursuant to NRS 600.435(3).

SIXTH CAUSE OF ACTION

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

1
2
3
4 71. Stephens repeats and realleges the allegations set forth in Paragraphs 1 through 70
5 above.

6 72. 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 73. Stephens has licensed and continues to license the Commercial Property in return
10 for value.

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

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

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

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

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

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

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

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

1 **SEVENTH CAUSE OF ACTION**

2 **UNJUST ENRICHMENT**

3 82. Stephens repeats and realleges the allegations set forth in Paragraphs 1 through 81
4 above.

5 83. Stephens owns the Stephens Marks.

6 84. GMI neither had nor has authority to use the Stephens Marks.

7 85. GMI's use of the Infringing Mark was in furtherance of GMI's own economic
8 gain by directing consumers and the public to GMI's Website.

9 86. GMI has accepted and retained all of the profits and benefits of GMI's
10 unauthorized use of the Infringing Mark.

11 87. As a result of GMI's acts as alleged herein, Stephens has suffered and will
12 continue to suffer damage to Stephens' business, goodwill, reputation, and profits, while GMI
13 profits at Stephens' expense.

14 88. Stephens is entitled to recover an amount by which GMI has been unjustly
15 enriched through GMI's unauthorized use of the Infringing Mark.

16
17 **PRAYER FOR RELIEF**

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

19 1. Preliminarily and permanently enjoin GMI, and GMI's officers, agents, servants,
20 employees, attorneys, parents, subsidiaries, related companies, partners, and all
21 persons acting for, by, with, through, or under GMI, 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 the Stephens Marks, or ordering, directing, participating in, or assisting in
any such activity; and

