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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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CASE NO. 03-20170
U.S. DIST. CT.
S.D. FLA. - MIAMI

METROGUIDE.COM, INC.,
a Florida corporation,

Plaintiff,

vs.

CIV. - SEITZ

HOTEL RESERVATIONS NETWORK,
INC., a Delaware corporation d/b/a
HOTELS.COM; and ROBERT DIENER,
individually,

Defendants.

**MAGISTRATE
BANDSTRA**

COMPLAINT

Plaintiff, MetroGuide.com, Inc. f/k/a RealMetros.com, Inc. ("MetroGuide"), by and through its undersigned attorneys, sues Defendants, Hotel Reservations Network, Inc. d/b/a Hotels.com ("HRN") and Robert Diener ("Diener") (collectively, HRN and Diener may be referred to as "Defendants"), and alleges:

Nature of Action, Subject Matter Jurisdiction and Venue

1. This is a civil action for (a) copyright infringement under the Copyright Act of the United States, 17 U.S.C. §§ 101 *et seq.*; (b) unfair competition and false designation of origin under the Lanham Act of the United States, 15 U.S.C. §§ 1051 *et seq.*; and (c) common law unfair competition arising under the laws of the State of Florida.

2. Subject matter jurisdiction over this action is conferred upon this Court by 28 U.S.C. § 1338. This Court has supplemental jurisdiction over MetroGuide's state-law claims pursuant to 28 U.S.C. § 1367 in that the state law claims are integrally related to the federal

claims and arise from a common nucleus of operative fact such that the administration of such claims herein is in the interests of judicial economy.

3. MetroGuide is a Florida corporation with its principal place of business in Hollywood, Florida. MetroGuide was formerly known as RealMetros.com, Inc.

4. HRN is a Delaware corporation with its principal place of business located at 8140 Walnut Hill Lane, Suite 800, Dallas, Texas. HRN also has an office in Miami, Florida.

5. Diener is an individual who resides in Miami, Florida. At all relevant times to this action, Diener was an officer, member, and/or principal of HRN. Upon information and belief, Diener personally participated in or had the ability and right to supervise, direct, and control the tortious acts committed by HRN, thereby rendering him personally liable for the acts complained of herein.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) because (a) Defendant HRN maintains a place of business within this District; (b) the claims alleged in this action arose in this District; and (c) Defendant Diener resides in this District.

General Allegations

7. MetroGuide is an online publisher of hotel and travel information.

8. The Internet is a global network of millions of interconnected computers. Over the past decade, the Internet has become an invaluable tool for businesses to communicate and conduct transactions with their customers.

9. Although the Internet supports a variety of communications, by far the best known and most widely used aspect of Internet communication is the "World Wide Web" (the "Web"). Using widely adopted computer protocols, the Web allows individuals using software

called a "browser" (e.g., Microsoft Explorer or Netscape Navigator) to receive text, images, audio and video from "web sites" located on special computers connected to the Internet called servers.

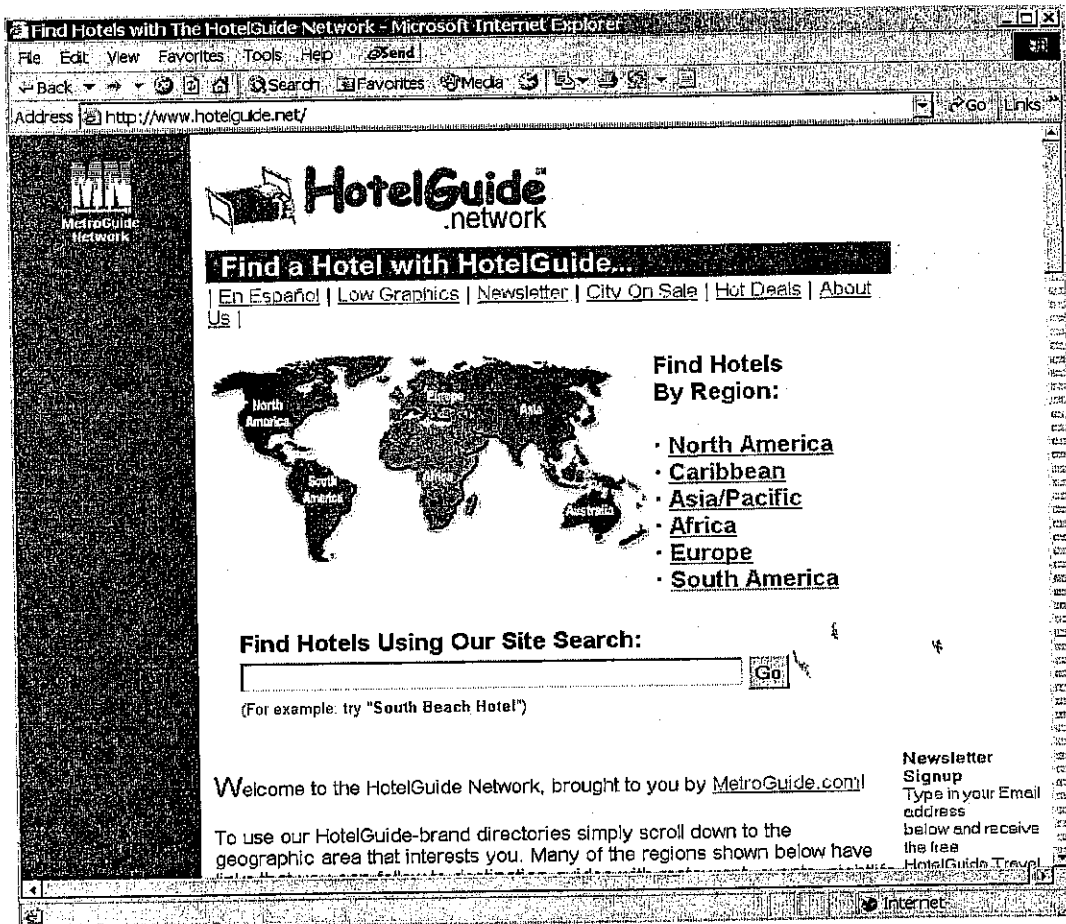
10. Internet web sites are generally created utilizing a language or code called hyper-text markup language ("HTML").

11. While the Internet itself utilizes a numbering scheme to address each and every computer connected to the Internet, this numbering system is not terribly convenient for most people to use. In order to make the Web more user-friendly, most--if not all--web sites utilize domain names so that a user can type in an address of "hotelguide.net" rather than "192.250.226.1." Domain names themselves are often broken down into segments. For instance, "miami.hotelguide.net" is actually comprised of three domain name segments. The ".net" referred to as a top-level domain name; the "hotelguide." portion is called a second-level domain name; and the "miami." portion is called a third-level domain name. In order to find a web site on the Internet, a computer user must type in at least the second-level and top-level domain names and bring up the web site at the corresponding numeric address. If, however, the customer is familiar with a particular web site, the customer may enter all three domain name segments in order for the browser to bring up that particular web page immediately.

12. In or about 1995, MetroGuide began to publish on the Internet a nationwide hotel listing service, "The HotelGuide Networksm" which provides hotel information specific to particular metropolitan areas. At that time, The HotelGuide Networksm contained listings for the metropolitan areas of Miami and Fort Lauderdale.

13. Since then, MetroGuide has continued to expand the number of metropolitan areas for which it publishes hotel and other travel-related content. In approximately 1997, MetroGuide expanded its website's functionality to allow Internet browsers to make hotel reservations on-line.

14. Presently, The HotelGuide Networksm provides hotel listings for over 170 cities in North America, Europe, Africa, the Middle East, Asia and South and Central America. The HotelGuide Networksm has consistently ranked among the most popular hotel content and reservation websites on the Internet. The homepage for The HotelGuide Networksm is found on the Internet at www.hotelguide.net, and appears as follows:



From this homepage, the entire directory of MetroGuide's hotel listings worldwide may be accessed. In addition to its worldwide hotel listing service, MetroGuide provides other travel information through its EventGuidesm, NightGuidesm, RetailGuidesm, DiningGuidesm, and MetroGuide services (the "MetroGuide Website(s)").

15. For each of the over 170 metropolitan areas for which MetroGuide publishes hotel listings, MetroGuide has created a web page that focuses on that particular metropolitan area (a "Metro Page"). Each Metro Page provides an introductory paragraph welcoming the customer to the site for that area and then subdivides the metropolitan area into regional locations. For example, the Miami Metro Page, located at www.Miami.hotelguide.net, subdivides the Miami area into the following regional locations: Miami Beach, South Beach, Airport, Downtown, Coral Gables, Coconut Grove, North Dade and South Dade. Each Metro Page also includes a description of each location. The regional locations are presented in a two-column format, with each location underlined and in slightly larger text than the accompanying description of the location. For each location, a one or two sentence description is provided to familiarize the customer with that region and thereby assist in the search for and selection of a convenient hotel. Customers are informed that they can begin searching for lodging options by selecting one or more of the locations. The customer has the option of clicking on any of the specified locations, prompting the appearance of a more detailed web page focusing exclusively on that location (the "Location Page").

16. Once a specific location is selected, the responsive Location Page provides: (1) an introductory paragraph welcoming the customer to the page for the hotel listings for that particular geographic area and explaining that detailed information about one or more of the

listed hotels is available by selecting it; and (2) a two-column list of hotels for the area, the names of which are in bold type and underlined, immediately followed by the address, phone number, number of rooms in the specific hotel, and certain miscellaneous information.

17. The copyright in The HotelGuide Network website ("The HotelGuide Network Website") was registered with the United States Copyright Office in compliance with the Copyright Act, 17 U.S.C. §§ 101 *et seq.* Copies of the Copyright Registration Certificates, bearing Registration Nos. TX 5-392-748, TX 5-392-749, TX 5-392-750, and TX 5-407-052, are attached hereto as Composite Exhibit "1" (the "MetroGuide Copyrights"). The HotelGuide Network Website has displayed a copyright notice since 1996.

18. MetroGuide has expended tremendous resources to make The HotelGuide Networksm the overwhelming success it is today. Since its inception in 1995, The HotelGuide Networksm has been visited hundreds of millions of times by customers and potential customers. In the last year alone, the MetroGuide Websites received approximately 30 million page views, an average of more than 82,000 visits per day. By providing high-quality and easy to use content, coupled with an easy-to-use organizational structure, customers can quickly obtain travel and hotel-related information. The faster a potential customer can obtain this information, the more likely it is a customer will make hotel reservations through The HotelGuide Networksm and the more likely it is the customer will return to The HotelGuide Networksm to make reservations in the future.

19. MetroGuide has extensively marketed and advertised the "HotelGuide" name and web site and has generated significant goodwill among consumers, and has built a strong following of repeat customer business. Much of MetroGuide's success can be attributed to the

public's association of the "HotelGuide" name with a service that consistently provides high-quality information, makes it easy for customers and potential customers to locate hotel-related information, and allows customers and potential customers to quickly and conveniently make hotel reservations.

MetroGuide's Relationship With HRN

20. HRN is a provider of discount hotel rooms and other lodging accommodations. HRN allows customers to book hotel rooms through HRN's on-line reservation service and toll-free call centers.

21. MetroGuide's relationship with HRN dates back to April 1998, when HRN sought to advertise its services through The HotelGuide Network Website.

22. Over time, MetroGuide's relationship with HRN developed to the point where MetroGuide agreed to operate as an HRN Affiliate. As an HRN Affiliate, MetroGuide, using The HotelGuide Network Website, agreed to provide links to HRN's co-branded hotel reservation system. Utilizing this system, MetroGuide customers would be able to make reservations utilizing HRN's hotel reservation system through The HotelGuide Networksm web pages in order to make it appear as if the customer had never left The HotelGuide Network. As a result, MetroGuide's customers are supposed to be given the impression that they have made a reservation through The HotelGuide Network rather than HRN or any of HRN's websites.

23. MetroGuide's position as an HRN Affiliate was formalized in January, 2000, when MetroGuide entered into an agreement with HRN.

24. HRN historically had operated its own website on the internet but relied on its affiliates to drive traffic to its site and booking engine. Beginning in approximately March 2002,

HRN engaged significant marketing resources to begin selling hotel room reservations using the domain name Hotels.com, which it had since acquired. In doing so, Hotels.com began competing intensely with its own affiliates, vying for the same customers. Indeed, each time a MetroGuide customer made a reservation directly through the HRN websites and not through The HotelGuide Networksm, HRN did not have to pay MetroGuide a commission in connection with the reservation. MetroGuide only received a commission when a customer utilized The HotelGuide Networksm website to access the HRN hotel reservation system.

25. Thus, both MetroGuide and HRN now compete for the same initial and repeat customers over the Internet.

26. HRN has also actively attempted to prevent potential customers from finding The HotelGuide Network Website. At one point, HRN paid to advertise dummy websites controlled by it in a fee-based Internet search engine called Overture.com solely for the purpose of having other websites ranked higher than The HotelGuide Network Website. Shortly thereafter, HRN employees signed up as "volunteer editors" for an Internet search engine called the Open Directory Project. Once HRN employees became volunteer editors, they proceeded to delete The HotelGuide Network Website from that particular search engine.

27. Each time MetroGuide discovered what HRN had done to unfairly compete with MetroGuide, HRN would apologize and indicate that it would cease the offending conduct. However, it was only a matter of time before HRN discovered yet another way to unfairly compete with MetroGuide.

HRN Encouraged HRN Affiliates To Infringe The MetroGuide Copyrights

28. An additional way to attract potential customers is to provide high quality content via an easy-to-use interface. MetroGuide's reputation for providing high quality content consistently caused The HotelGuide Network Website to attract a large number of customers and acquire a prominent search engine placement.

29. Upon information and belief, Diener and HRN actively encouraged other HRN Affiliates to use MetroGuide's copyrighted content from The HotelGuide Network Website. HRN did this because of the financial benefit to HRN in that other affiliates would acquire greater internet traffic and search engine placement and, in addition, may not receive the same level commission as that paid to MetroGuide. By stealing content from The HotelGuide Network Website, and the MetroGuide Network Websites in general, other HRN Affiliates could provide high quality content to attract potential customers, and perhaps even do so at a lower cost to HRN. In addition, by stealing content from The HotelGuide Network Websites, HRN Affiliates sought to avoid having to incur the expense and time necessary to develop a website to compete with The HotelGuide Network Website.

30. One example of HRN actively encouraging an HRN Affiliate to infringe the MetroGuide Copyrights involves e-Business Holdings Corp. ("e-Business"), which stole approximately 10,000 pages of content from The HotelGuide Network Website. Despite e-Business' wholesale copying of MetroGuide's copyrighted material, HRN offered e-Business a preferential commission rate, thereby rewarding e-Business for stealing copyrighted content from The HotelGuide Network Website. Moreover, HRN and Diener were well aware that the owners of e-Business were former MetroGuide employees with access to MetroGuide's copyrighted material. Even after HRN learned of MetroGuide's lawsuit against e-Business,

HRN and Diener allowed e-Business to continue operating as an HRN Affiliate utilizing infringing copyrighted material.

31. The situation with e-Business is not unique. In fact, MetroGuide has brought several actions against HRN Affiliates for, *inter alia*, infringement of the MetroGuide Copyrights. MetroGuide currently has two separate actions pending in the United States District Court for the Southern District of Florida against HRN Affiliates seeking injunctive relief and damages for, *inter alia*, the HRN Affiliates' willful infringement of the MetroGuide Copyrights. Moreover, MetroGuide recently informed HRN that an affiliate it has previously sued continued to publish webpages that contained infringing content.

32. In each case, and even after HRN is made aware of its Affiliates infringing conduct, HRN does nothing to prevent or punish its Affiliates for infringing the MetroGuide Copyrights. Instead, HRN allows these HRN Affiliates to continue operating because ultimately, HRN profits when HRN Affiliates attract customers who make hotel reservations, even if those affiliates are attracting customers using infringing materials.

HRN's Utilization of Predatory Advertising To Unfairly Compete With MetroGuide

33. In addition to encouraging, contributing and inducing HRN Affiliates to infringe the MetroGuide Copyrights, HRN itself has utilized predatory advertising to unfairly compete directly with MetroGuide.

34. In the instant case, the predatory advertising involves, *inter alia*, the use of computer software commonly called spyware or scumware. A computer user loads computer software ostensibly for performing a particular task, e.g., storing passwords. In addition to installing the computer software necessary to operate a given application, e.g., to store

passwords, spyware also loads programs onto a user's computer that are essential to the predatory advertising. The spyware then sits undetected on a user's computer until the user opens a web browser. When the computer user begins browsing the Internet, the spyware becomes active and opens up windows on top of the web browser containing advertising for competing services. Free software from The Gator Corporation ("Gator"), including programs called "eWallet," "Date Manager" and "Precision Time," are examples of computer software essential to predatory advertising. In part, the essential software is called spyware because consumers are misled into believing that they are only installing some useful application, and generally without consumers' knowledge, the spyware components are also installed.

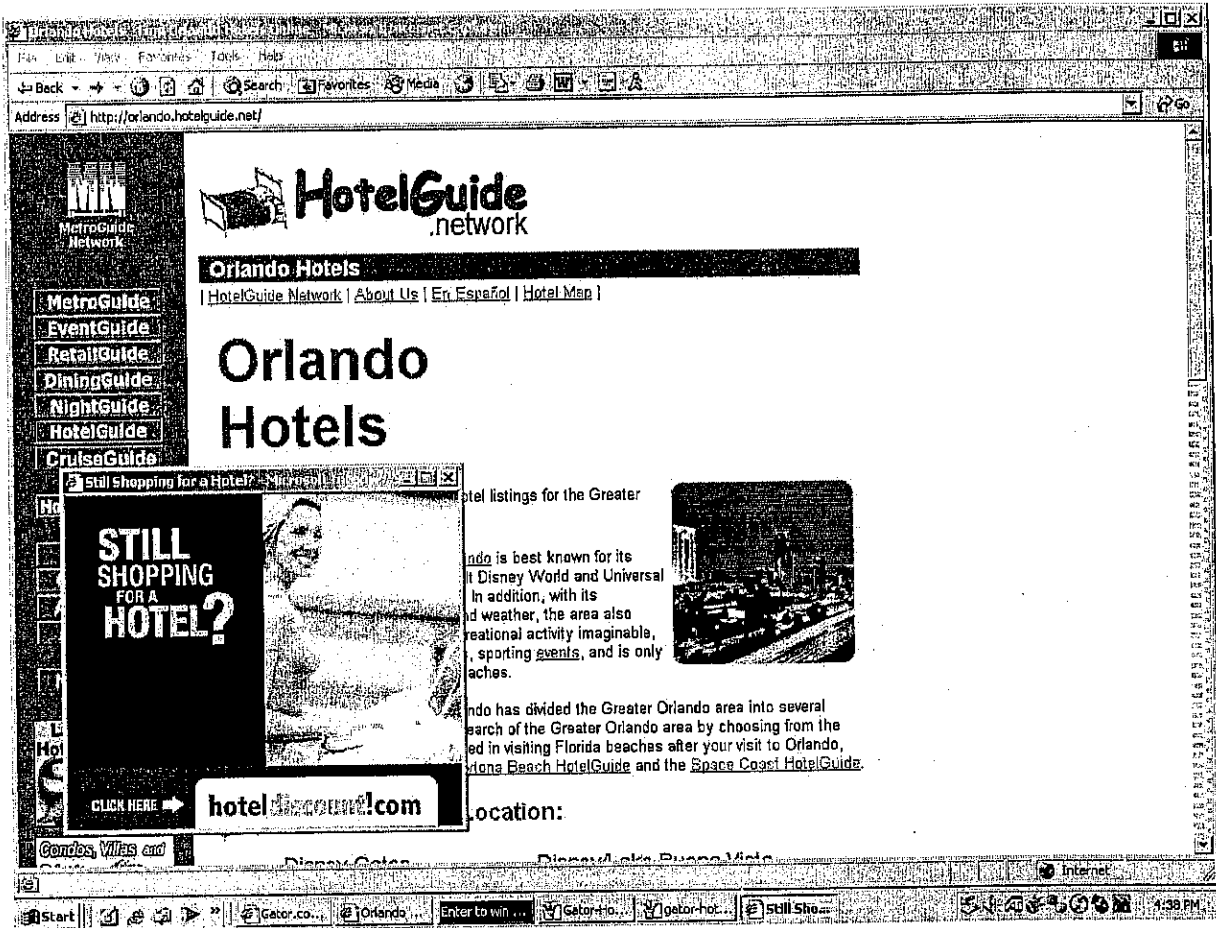
35. Through the use of predatory advertising, a company can target its advertising so that it only appears when a potential consumer looks at the company's competitors' websites. For example, through predatory advertising a company like American Airlines could direct that its "pop-up" advertisements appear on a potential customer's computer whenever that potential consumer opens a web browser and looks for airline tickets at the United or Delta Airlines websites.

36. In this case, HRN contracted with Gator or the Gator Advertising and Information Network to engage in predatory advertising of The HotelGuide Network Website. As a result, whenever a potential customer who had been tricked into installing Gator's software visited The HotelGuide Network Website, the spyware could open and display a window containing advertising for HRN's HotelDiscount.com website over The HotelGuide Network Website. Unlike other forms of advertising that do not obscure the basic website, the predatory advertising

covers and obscures a portion of the underlying website. In this case, HRN's predatory advertising appeared as follows:



This example clearly demonstrates how the predatory advertising for HRN's hoteldiscount.com site appears in a pop-up window over the MetroGuide web page, miami.hotelguide.net, being displayed in the web browser. Another example demonstrates HRN's use of predatory advertising in connection with MetroGuide's orlando.hotelguide.net web page:



Yet another instance of this misconduct is shown below where HRN used predatory advertising in connection with MetroGuide's miami.hotelguide.net web page to promote its website Hotels.com:



Through the use pop-up windows such as these, HRN has altered the appearance of the MetroGuide web pages to make it appear that the advertisement is in some way affiliated with or sponsored by MetroGuide.

37. Upon discovering that HRN was utilizing predatory advertising to unfairly compete with MetroGuide, MetroGuide demanded that HRN immediate cease and desist use of such advertising. Upon information and belief, HRN has since ceased targeting The HotelGuide Network Website with predatory advertising, yet MetroGuide has still suffered damage as a result of HRN's actions.

38. Indeed, HRN is aware of the unfair nature of such predatory advertising, and, even seeks to prohibit its own HRN Affiliates from using such predatory advertising. The standard Website Linking and License Agreement that HRN, through its subsidiary TravelNow.com, uses to sign up affiliates provides:

13. Predatory Advertising

Affiliate agrees not to use any predatory advertising methods designed to generate traffic from sites they have not contracted within the online promotion of the Affiliate's products, services or affiliate program and agrees to prohibit their websites from such predatory advertising methods.

Predatory advertising is defined as any method that creates or overlays links or banners on web sites, spawns browser windows, or any method invented to generate traffic from a web site without that web site owner's, knowledge, permission, and participation.

Examples include, but are not limited to, keyword parsing browser plugins such as TopText and +Surf, banner replacement technology such as Gator, browser spawning technology that is not web site dependent."

Despite being aware of predatory advertising and seeking to avoid others' use of such unscrupulous advertising tactics, HRN has improperly utilized said predatory advertising to unfairly compete with MetroGuide.

HRN's Utilization of Link Farms To Unfairly Compete With MetroGuide

39. One of the most common ways that customers find web sites such as The HotelGuide Network Websites is through the use of Internet search engines such as Google[™] (www.google.com). Internet search engines such as Google[™] maintain indexes of web pages based on the text contained on the web pages as well as other factors that are not publicly disclosed. It is readily apparent, however, that search engines periodically review the web sites

listed in their database, and upon confirmation that a web site contains useful content, the web site achieves a higher ranking. When a potential customer performs a search on Google™, it returns a list of websites that Google™ deems relevant to the provided search criteria. Where a website appears on the resulting list is commonly called a “rank” or “page rank.” The higher a websites’ rank, the more likely it is a potential customer will visit that website.

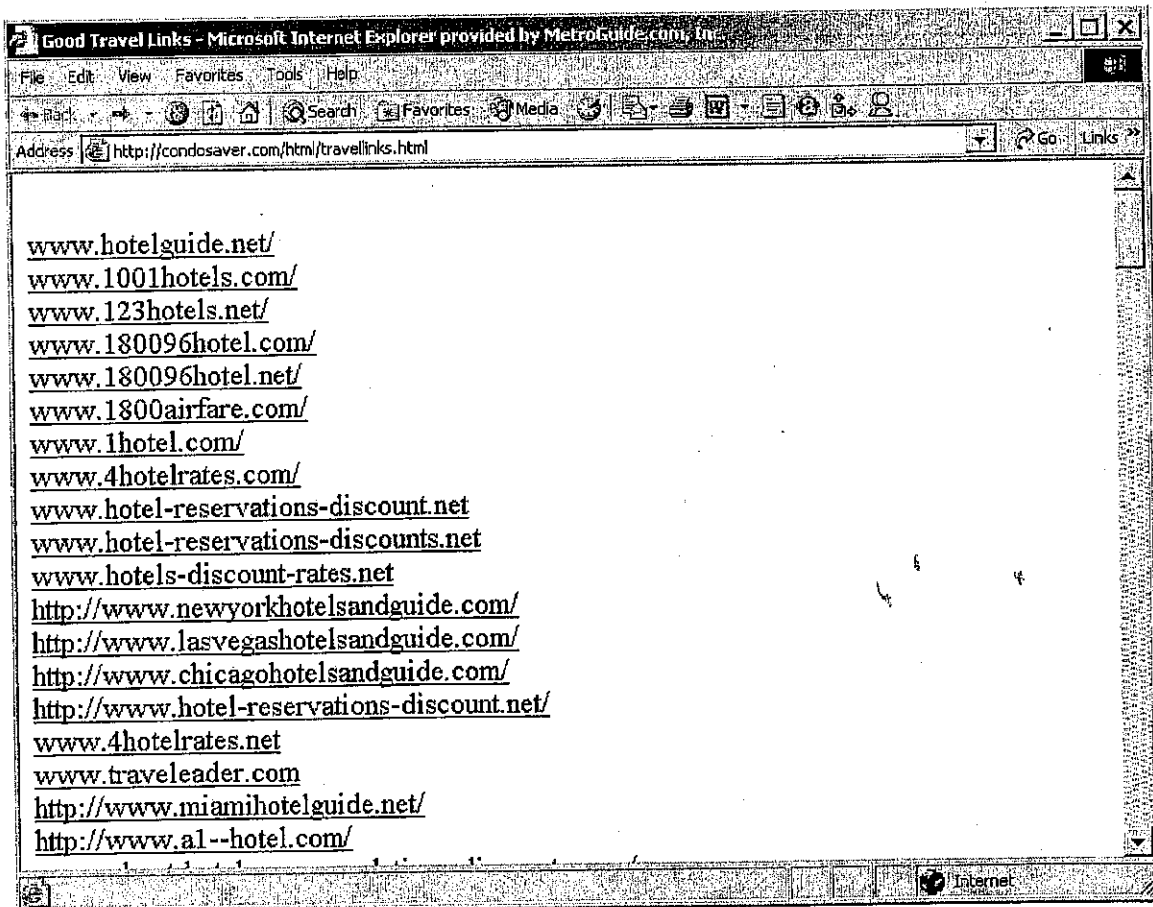
40. The HotelGuide Network Website, containing information about particular metropolitan, regional and location areas, have traditionally been ranked very high because of the amount of high-quality content that MetroGuide provides. For example, running a search on Google™ for the keywords “hotels miami beach” returns a list of results with The HotelGuide Network Website for Miami appearing fourth out of approximately 804,000 web sites that Google™ determined to be responsive to the search.

41. One way to improve the ranking of a particular web site is to link to other, highly ranked web sites. The search engines presume that if a web site links to another web site that has been confirmed to contain popular high quality content, then the linking site must be related in some way. In this case, The HotelGuide Network Website has been confirmed to contain popular high quality content. Another unrelated web site, such as an HRN website, can improve its search engine ranking by linking to The HotelGuide Network Website.

42. However, if HRN were to include a link to The HotelGuide Network Website on one of its websites, HRN might actually refer potential customers to The HotelGuide Network. In order to avoid sending MetroGuide customers, but still link to The HotelGuide Network Website and still take advantage of MetroGuide’s popular high quality content, HRN began using what is commonly called a “link farm.” A link farm is a web page containing a list of

hyperlinks to other web sites. The link farm web page is typically hidden away in an obscure location so as to make it unlikely that a potential customer would find the link farm; since search engines scan web pages through an automated process, the search engines can still find the link farm and re-rank the web pages based on the association.

43. When MetroGuide first discovered that HRN was using a link farm, and included a hyperlink to The HotelGuide Network Website in the link farm, MetroGuide notified Diener and HRN and demanded that HRN eliminate The HotelGuide Network Website from the link farm. Notwithstanding HRN promise to remove the hotelguide.net link from the link farm, the link continued to persist, requiring MetroGuide to make repeated demands that the link be removed. The link farm, linking to hotelguide.net as its first link, appeared as follows:



Although the damage had already been done--HRN was able to improve its search engine ranking because the search engines had already reviewed the link farm--HRN eliminated the hyperlink to The HotelGuide Network Website.

44. Despite MetroGuide's demands that HRN stop including The HotelGuide Network Website in HRN's link farm, MetroGuide discovered that HRN was operating other link farms. Upon information and belief, HRN continues utilizing link farms, and may continue including The HotelGuide Network Website in a link farm.

45. HRN's use of and inclusion of The HotelGuide Network Website in HRN's link farm allows HRN to trade on the goodwill associated with The HotelGuide Network Website without having to develop its own goodwill. By using link farms in this matter, HRN has attempted to mislead the Internet search engines and potential customers into believing that HRN's websites are the same as The HotelGuide Network Website, or is in some way affiliated with The HotelGuide Network Website.

COUNT I

Copyright Infringement Under Federal Law, 17 U.S.C. § 501 Liability Of HRN And Diener For Encouraging HRN Affiliates To Infringe The MetroGuide Copyrights (All Defendants)

46. MetroGuide repeats paragraphs 1 through 45 in support of this count.

47. This cause of action arises under Section 501 of Title 17 of the United States Code.

48. MetroGuide owns a valid copyright in and to The HotelGuide Network Website and the content therein, and has obtained copyright registrations for The HotelGuide Network Website from the United States Copyright Office.

49. HRN and Diener have contributed to and induced the infringement of the MetroGuide Copyrights in violation of MetroGuide's exclusive rights as set forth in Section 106 of Title 17 of the United States Code. Specifically, HRN and Diener have contributed to and induced the violation of MetroGuide's exclusive copyrights by:

- (a) actively encouraging HRN Affiliates to prepare unauthorized derivative works based upon The HotelGuide Network Website; and
- (b) actively encouraging HRN Affiliates to display MetroGuide's copyrighted content without authorization.

50. Additionally, HRN and Diener are liable for infringement of the MetroGuide Copyrights in violation of MetroGuide's exclusive rights as set forth in Section 106 of Title 17 of the United States Code in that HRN and Diener:

- (a) had, and have, an ability to prevent HRN Affiliates from infringing the MetroGuide Copyrights; and
- (b) profited, and continue to profit, from the HRN Affiliates' infringing activity.

51. In both cases, HRN benefited as a result of the HRN Affiliates' copying and transformation of The HotelGuide Network Websites in violation of the exclusive rights that MetroGuide has in the MetroGuide Copyrights.

52. By actively encouraging HRN Affiliates to infringe the MetroGuide Copyrights, HRN and Diener have willfully contributed to and induced the infringement of the MetroGuide Copyrights.

53. HRN's and Diener's activities have caused MetroGuide to sustain monetary damage, loss, and injury, in an amount to be determined at trial. MetroGuide is entitled to recover its actual damages and HRN's and Deiner's profits relating to the infringement; alternatively, MetroGuide is entitled to statutory damages.

54. HRN's and Diener's unlawful activities have caused, and unless enjoined by this Court will continue to cause, irreparable damage, loss and injury to MetroGuide for which it has no adequate remedy at law.

COUNT II
Copyright Infringement Under Federal Law, 17 U.S.C. § 501
Liability Of Defendants For Direct Infringement
Of The MetroGuide Copyrights
(All Defendants)

55. MetroGuide repeats paragraphs 1 through 45 in support of this count.

56. This cause of action arises under Section 501 of Title 17 of the United States Code.

57. MetroGuide owns a valid copyright in and to The HotelGuide Network Website and the content therein, and has obtained copyright registrations for The HotelGuide Network Website from the United States Copyright Office.

58. Defendants have infringed the MetroGuide Copyrights by displaying The HotelGuide Network Website together with its predatory advertising. Through the use of predatory advertising that caused an additional window with HRN's content to appear over The

HotelGuide Network Website, Defendants were able to recast and transform MetroGuide's copyrighted material.

59. Defendants' activities have caused MetroGuide to sustain monetary damage, loss, and injury, in an amount to be determined at trial. MetroGuide is entitled to recover its actual damages and Defendants' profits relating to the infringement; alternatively, MetroGuide is entitled to statutory damages.

60. Diener is individually and personally liable for Defendants' infringement of the MetroGuide Copyrights because Diener had the ability and right to supervise, direct, and control Defendants' tortious actions.

61. Defendants' unlawful activities have caused, and unless enjoined by this Court will continue to cause, irreparable damage, loss and injury to MetroGuide for which it has no adequate remedy at law.

COUNT III
False Designation of Origin and Unfair Competition
Under Federal Law, 15 U.S.C. § 1125(a)
Liability Of Defendants For Utilizing Predatory Advertising
(All Defendants)

62. MetroGuide repeats paragraphs 1 through 45 in support of this count.

63. This cause of action arises under Section 1125 of Title 15 of the United States Code.

64. Defendants' use of predatory advertising creates a likelihood that a false and unfair association will be made between the HRN pop-up advertisements and MetroGuide, in that the consuming public is likely to believe that HRN and/or the services offered by HRN are connected with, affiliated with, authorized by, sponsored by or approved by MetroGuide.

65. Defendants' use of predatory advertising constitutes unfair competition because Defendants have used MetroGuide's reputation and goodwill to offer HRN's services which are not sponsored or approved by, or connected with, MetroGuide. The predatory advertising places HRN's advertisements over The HotelGuide Network Website so as to make it appear that The HotelGuide Network Website generated the HRN advertisement.

66. Upon information and belief, Defendants' acts have been and are being committed with the purpose and willful intent of misappropriating and trading upon MetroGuide's goodwill and reputation, and the goodwill and reputation associated with The HotelGuide Network Website.

67. By its actions, Defendants have unfairly competed with, and continue to unfairly compete with, MetroGuide in violation of Section 43(a) of the Lanham Act of 1946, as amended, 15 U.S.C. § 1125(a).

68. Defendants have engaged in this activity knowingly, willfully, with actual malice, and in bad faith, so as to justify the assessment of treble damages against them.

69. Defendants' tortious actions have caused MetroGuide to sustain monetary damage, loss, and injury, in an amount to be determined at the time of trial.

70. Defendants' tortious actions has caused, and unless enjoined by this Court will continue to cause, irreparable damage, loss and injury to MetroGuide for which it has no adequate remedy at law.

71. Diener is individually and personally liable for Defendants' tortious actions because Diener had the ability and right to supervise, direct, and control Defendants' use of predatory advertising and Defendants' attempts to unfairly compete with MetroGuide.

COUNT IV
False Designation of Origin and Unfair Competition
Under Federal Law, 15 U.S.C. § 1125(a)
Liability Of Defendants For Utilizing Link Farms
(All Defendants)

72. MetroGuide repeats paragraphs 1 through 45 in support of this count.

73. This cause of action arises under Section 1125 of Title 15 of the United States Code.

74. Defendants' use of link farms including hyperlinks to The HotelGuide Network Website creates a likelihood that a false and unfair association will be made between HRN's services and MetroGuide's services because such use is likely to mislead Internet search engines, and ultimately consumers and potential consumers, into believing that HRN's services are the same as MetroGuide's services, or that HRN's services are in some way affiliate with, sponsored, authorized, approved, or sanctioned by MetroGuide.

75. Upon information and belief, Defendants' acts have been and are being committed with the purpose and intent of misappropriating and trade upon the goodwill and reputation associated with MetroGuide and its reputation for providing high quality content and services.

76. By its actions, Defendants have unfairly competed with, and continue to unfairly compete with, MetroGuide in violation of Section 43(a) of the Lanham Act of 1946, as amended, 15 U.S.C. § 1125(a).

77. Defendants have engaged in this activity knowingly, willfully, with actual malice, and in bad faith, so as to justify the assessment of treble damages against them.

78. Defendants' tortious actions have caused MetroGuide to sustain monetary damage, loss, and injury, in an amount to be determined at the time of trial.

79. Defendants' tortious actions has caused, and unless enjoined by this Court will continue to cause, irreparable damage, loss and injury to MetroGuide for which it has no adequate remedy at law.

80. Diener is individually and personally liable for Defendants' tortious actions involving the use of link farms because upon information and belief Diener had the ability and right to supervise, direct, and control HRN's tortious actions.

COUNT V
Unfair Competition Under Florida Common Law
Liability Of Defendants For Utilizing Predatory Advertising
(All Defendants)

81. MetroGuide repeats paragraphs 1 through 45 in support of this count.

82. Defendants' use of predatory advertising constitutes unfair competition under the laws of Florida because such use is likely to mislead consumers and potential consumers into believing that HRN's services are the same as MetroGuide's services, or that HRN's services are in some way affiliated with, sponsored, authorized, approved, or sanctioned by MetroGuide.

83. Defendants' use of predatory advertising constitutes unfair competition under the laws of Florida because HRN has used MetroGuide's reputation and goodwill to offer HRN's services which are not sponsored or approved by, or connected with, MetroGuide.

84. Defendants have engaged in this activity knowingly, willfully, with actual malice, and in bad faith so as to justify the assessment of increased, exemplary and punitive damages against them, in an amount to be determined at trial.

85. Defendants' tortious actions have caused MetroGuide to sustain monetary damage, loss, and injury, in an amount to be determined at the time of trial.

86. Defendants' tortious actions have caused, and unless enjoined by this Court will continue to cause, irreparable damage, loss, and injury to MetroGuide for which it has no adequate remedy at law.

87. Diener is individually liable for Defendants' tortious actions because upon information and belief Diener had the ability and right to supervise, direct, and control Defendants' tortious actions.

COUNT VI
Unfair Competition Under Florida Common Law
Liability Of Defendants For Utilizing Link Farms
(All Defendants)

88. MetroGuide repeats paragraphs 1 through 45 in support of this count.

89. Defendants' use of link farms including hyperlinks to The HotelGuide Network Website constitutes unfair competition under the laws of Florida because such use is likely to mislead consumers and potential consumers into believing that HRN's services are the same as MetroGuide's services, or that HRN's services are in some way affiliated with, sponsored, authorized, approved, or sanctioned by MetroGuide.

90. Defendants' use of link farms including hyperlinks to The HotelGuide Network Website constitutes unfair competition under the laws of Florida because such use is likely to confuse Internet search engines that consumers and potential consumers will use to locate on-line services such as MetroGuide's and HRN's services.

91. Defendants have engaged in this activity knowingly, willfully, with actual malice, and in bad faith so as to justify the assessment of increased, exemplary and punitive damages against them, in an amount to be determined at trial.

92. Defendants' tortious actions have caused MetroGuide to sustain monetary damage, loss, and injury, in an amount to be determined at the time of trial.

93. Defendants' tortious actions have caused, and unless enjoined by this Court will continue to cause, irreparable damage, loss, and injury to MetroGuide for which it has no adequate remedy at law.

94. Diener is individually liable for Defendants' tortious actions because upon information and belief Diener had the ability and right to supervise, direct, and control Defendants' tortious actions.

PRAYER FOR RELIEF

WHEREFORE, MetroGuide prays for an Order and Judgment:

A. That HRN, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, who receive actual notice of the Order by personal service or otherwise, be preliminarily enjoined and restrained from:

1. Reproducing or copying The HotelGuide Network Website, or any portions thereof, or otherwise engaging in acts that constitute copyright infringement under the copyright laws of the United States and which would damage or injure MetroGuide;

2. Continuing to use content from The HotelGuide Network Website, including without limitation all derivative works created from or which otherwise incorporate content from The HotelGuide Network Website;

3. Utilizing content from The HotelGuide Network Website to unfairly compete with MetroGuide; and

4. Inducing, encouraging, instigating, aiding, abetting, or contributing to any of the aforesaid acts.

5. Inducing, encouraging, instigating, aiding, abetting, or assisting others in engaging in the aforesaid acts.

B. That HRN, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, who receive actual notice of the Order by personal service or otherwise, be permanently enjoined and restrained from:

1. Reproducing or copying The HotelGuide Network Website, or any portions thereof, or otherwise engaging in acts that constitute copyright infringement under the copyright laws of the United States and which would damage or injure MetroGuide;

2. Continuing to use content from The HotelGuide Network Website, including without limitation all derivative works created from or which otherwise incorporate content from The HotelGuide Network Website;

3. Utilizing content from The HotelGuide Network Website to unfairly compete with MetroGuide; and

4. Inducing, encouraging, instigating, aiding, abetting, or contributing to any of the aforesaid acts.

5. Inducing, encouraging, instigating, aiding, abetting, or assisting others in engaging in the aforesaid acts.

C. That in accordance with 17 U.S.C. §§ 504 and 505, HRN and Diener, jointly and severally, be ordered to:

1. Account for and pay over to MetroGuide an amount equal to MetroGuide's actual damages and all of the gains, profits, savings, and advantages realized by Defendants as a result of Defendants' infringement of the MetroGuide Copyrights and the HRN Affiliates' infringement of the MetroGuide Copyrights;

2. Pay MetroGuide statutory damages for each of Defendants' infringements of the MetroGuide Copyrights;

3. Pay MetroGuide statutory damages for each violation committed by an HRN Affiliate where HRN and/or Diener actively encouraged the HRN Affiliate to infringe the MetroGuide Copyrights, and for each violation committed by an HRN Affiliate where HRN and/or Diener are vicariously liable for the infringement of the MetroGuide Copyrights;

4. Reimburse MetroGuide for the costs of this action; and

5. Reimburse MetroGuide for any and all reasonable attorney's fees incurred as a result of the infringement of the MetroGuide Copyrights.

D. That HRN, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, who receive actual notice of the Order by personal service or otherwise, be preliminarily and permanently enjoined and restrained from:

1. Making any false designation of origin, description, representation or suggestion that HRN is the source or sponsor of MetroGuide, its web sites, or

its services, and from otherwise competing unfairly with MetroGuide in any manner;

2. Acting in any manner which causes HRN's services or website to be in any way confused with MetroGuide and/or the MetroGuide's services, or The HotelGuide Network Website;

3. Acting, or causing another entity to act, in any manner likely to dilute, tarnish, impair or blur the distinctiveness of MetroGuide's service marks or the good will associated with its Websites;

4. Infringing in any manner or causing any other entity to infringe in any manner upon MetroGuide's service marks, services or Websites, or otherwise competing unfairly with MetroGuide in any manner; and

5. Misappropriating or otherwise unfairly trading upon the goodwill of MetroGuide, its service marks, services or Websites.

E. That in accordance with 15 U.S.C. § 1117, HRN and Diener, jointly and severally, be ordered to:

1. Account for and pay over to MetroGuide an amount equal to MetroGuide's actual damages, and all of the gains, profits, savings, and advantages realized by Defendants' as a result of the Defendants' unfair competition, and if Defendants' actions are deemed to be willful and intentional, then such amount should be increased to an amount not exceeding three times of such amount;

2. Reimburse MetroGuide for the costs of this action; and

3. Reimburse MetroGuide for any and all reasonable attorney's fees incurred as a result of Defendants' unfair competition.

F. That under Florida common law, HRN and Diener, be ordered, jointly and severally, to pay actual and punitive damages, upon a proper showing, together with the costs of this action.

Dated: January 27, 2003.

Respectfully submitted,

FELDMAN, GALE & WEBER, P.A.
Attorneys for MetroGuide
Miami Center, 19th Floor
201 South Biscayne Boulevard
Miami, Florida 33131-4332
Telephone: 305-358-5001
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By: 

James A. Gale
Florida Bar No. 371726
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Samuel A. Lewis
Florida Bar No. 55360
E-Mail: slewis@FGWLaw.com



This Certificate issued under the Seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

UNITED STATES COPYRIGHT OFFICE

TX 5-392-748
EFFECTIVE DATE OF REGISTRATION
NOV 13 2001

Marybeth Peters

REGISTER OF COPYRIGHTS
United States of America

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK
HotelGuide Network Sites

PREVIOUS OR ALTERNATIVE TITLES

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared

If published in a periodical or serial give Volume Number Issue Date On Pages

2

NAME OF AUTHOR
a Metz Advertising & Publishing Corp.

Was this contribution to the work a "work made for hire"?
AUTHOR'S NATIONALITY OR DOMICILE
United States
Florida

DATES OF BIRTH AND DEATH
Year Born Year Died

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Pseudonymous?

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.
b Website text and graphics

NAME OF AUTHOR
Was this contribution to the work a "work made for hire"?
AUTHOR'S NATIONALITY OR DOMICILE

DATES OF BIRTH AND DEATH
Year Born Year Died

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Pseudonymous?

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.

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Was this contribution to the work a "work made for hire"?
AUTHOR'S NATIONALITY OR DOMICILE

DATES OF BIRTH AND DEATH
Year Born Year Died

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Pseudonymous?

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.

3

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED
1999
DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
December 31 1999
U.S.A.

4

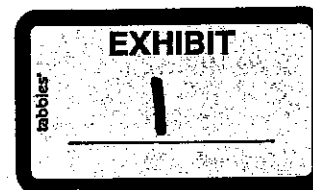
COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.
RealMetros.com, Inc.
3990 Sheridan St., Suite 107
Hollywood, Florida 33021

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.
By change of name, Metz Advertising & Publishing Corp. became RealMetros.com, Inc.

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United States of America

TX 5-392-749



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1

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If published in a periodical or serial give: Volume Number Issue Date On Pages

2

NAME OF AUTHOR

a RealMetros.com, Inc.

Was this contribution to the work a "work made for hire"?
 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of United States
Domiciled in Florida

DATES OF BIRTH AND DEATH
Year Born Year Died

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.
Website text and graphics

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NAME OF AUTHOR

b

Was this contribution to the work a "work made for hire"?
 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of
Domiciled in

DATES OF BIRTH AND DEATH
Year Born Year Died

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.

NAME OF AUTHOR

c

Was this contribution to the work a "work made for hire"?
 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of
Domiciled in

DATES OF BIRTH AND DEATH
Year Born Year Died

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.

3

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED
2000
This information must be given in all cases.

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Month December Day 31 Year 2000
U.S.A. Nation

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.

RealMetros.com, Inc.
3990 Sheridan St., Suite 107
Hollywood, Florida 33021

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

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Marybeth Peters

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United States of America

TX 5-392-750



EFFECTIVE DATE OF REGISTRATION

NOV 13 2001

Month Day Year

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1

TITLE OF THIS WORK

HotelGuide Network Sites

PREVIOUS OR ALTERNATIVE TITLES

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

If published in a periodical or serial give. Volume Number Issue Date On Pages

2

NAME OF AUTHOR

RealMetros.com, Inc.

DATES OF BIRTH AND DEATH
Year Born Year Died

Was this contribution to the work a "work made for hire"?
 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of United States
Domiciled in Florida

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.
Website text and graphics

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NAME OF AUTHOR

Was this contribution to the work a "work made for hire"?
 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of
Domiciled in

DATES OF BIRTH AND DEATH
Year Born Year Died

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Yes No
Pseudonymous? Yes No

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NAME OF AUTHOR

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 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of
Domiciled in

DATES OF BIRTH AND DEATH
Year Born Year Died

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Yes No
Pseudonymous? Yes No

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.

3

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED
2001

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Month November Day 9 Year 2001
U.S.A. Nation

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.

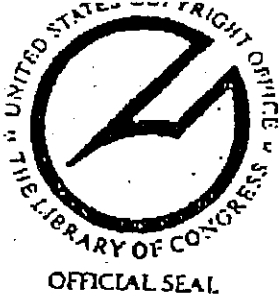
RealMetros.com, Inc.
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Hollywood, Florida 33021

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Marybeth Peters

REGISTER OF COPYRIGHTS
United States of America

FORM TX
For 3 Non-dramatic Literary Works
UNITED STATES COPYRIGHT OFFICE

TX 5-407-052



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1

TITLE OF THIS WORK

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If published in a periodical or serial give: Volume Number Issue Date On Page

2

NAME OF AUTHOR

a Metz Advertising & Publishing Corp

DATES OF BIRTH AND DEATH
Year Born Year Died

Was this contribution to the work a work made for hire?
 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR Citizen of United States
Domiciled in Florida

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? Yes No
Pseudonymous? Yes No
If the answer to either of these questions is "Yes," see Section 1, "Yes," on deposit instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.
Website - not actual graphics

NAME OF AUTHOR

b
Was this contribution to the work a work made for hire?
 Yes
 No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR Citizen of
Domiciled in

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Year Born Year Died

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Name of Country
OR Citizen of
Domiciled in

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Year Born Year Died

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Anonymous? Yes No
Pseudonymous? Yes No
If the answer to either of these questions is "Yes," see Section 1, "Yes," on deposit instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed.

3

a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED
1996

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Complete this information ONLY if this work has been published.
Month: July Day: 31 Year: 1996

4

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