

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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JEWISH EDUCATIONAL MEDIA, INC.,	:	
	:	
Plaintiff,	:	Civil Action No. _____
	:	
v.	:	
	:	
MENDEL MINTZ AND SHMULY BUTLER,	:	
	:	
Defendants.	:	
	:	
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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiff Jewish Educational Media, Inc. (“JEM” or “Plaintiff”), by and through its undersigned counsel, for its Complaint against Defendants Mendel Mintz (“Mintz”) and Shmuly Butler (“Butler”) (collectively, “Defendants”), allege upon personal knowledge with respect to itself and its own acts, and upon information and belief as to other matters as follows:

NATURE OF THE ACTION

1. This lawsuit concerns Defendants’ repeated, willful, and unapologetic infringement of JEM’s copyrighted materials, and transparent attempt to free-ride on JEM’s extensive efforts building and maintaining a non-profit library of copyrighted materials concerning the famed late leader of the Chabad-Lubavitch movement, the Rebbe Menachem M. Schneerson, of righteous memory (commonly referred to as “the Rebbe”).

2. For the past 40 years, JEM has devoted countless hours to producing, adapting, and disseminating thousands of hours of audiovisual materials pertaining to the Rebbe, including but not limited to restored, remastered, and newly translated and subtitled recordings of his public addresses; highly produced documentary features; and both full-length and carefully

edited video collections documenting the Rebbe's scholarship and his role in steering the course of Jewish history in the twentieth century. JEM owns the copyrights in these audiovisual works as well as in myriad photographs (collectively, the "Copyrighted Works"). The Copyrighted Works consist of both raw, unedited materials as well as materials that have been "produced" through color correction, the addition of subtitles in multiple languages, and the improvement of sound quality, among other things. Many of the Copyrighted Works are the subject of existing registrations, and others are the subject of applications that are currently pending before the U.S. Copyright Office.

3. As a non-profit organization, JEM relies heavily on donations to support its broadcast-quality productions, innovative online platforms, publications, and preservation and other educational efforts. JEM also licenses the Copyrighted Works subject to important conditions and limitations on licensees.

4. Accordingly, JEM's ability to operate and sustain its mission to share the legacy of the Rebbe is severely hampered when the Copyrighted Works are simply copied, distributed, and publicly performed without authorization and/or license restrictions. Such conduct also impacts JEM's mission by clouding its message and drawing traffic away from its websites, and enables third parties acting in bad faith to misrepresent the Rebbe's voice, image, and legacy. For that reason, among other actions to protect and enforce its intellectual property, JEM's website includes Terms and Conditions reminding users that its materials are copyrighted and may not be further distributed or displayed by users indiscriminately, and that users may not change or delete copyright notices on those materials.

5. In flagrant disregard for JEM and its intellectual property rights, Defendants have made extensive, unauthorized use of many of JEM's Copyrighted Works by (1) copying them

from a number of sources, including unpublished videos in JEM’s archive, television broadcasts, JEM releases, authorized usage in non-JEM publications, and JEM’s websites; and (2) posting them on Defendants’ own website, RebbeDrive.com, the “RebbeDrive” and “Maftaiach” apps, and social media platforms. Defendants have also provided copies of the Copyrighted Works, either for a fee or free of charge, to third-party websites, print publications and productions, sometimes with false attribution to RebbeDrive.

6. Moreover, when making such unauthorized uses of JEM’s works, Defendants often strip pertinent copyright management information such as the watermarked JEM Mark and supplant it with their own logo, thus concealing from RebbeDrive users that these materials are, in fact, stolen from JEM and violate JEM’s intellectual property rights.

7. On those occasions when Defendants do refer to JEM, they often falsely suggest that JEM sponsors, endorses, approves, or is associated or affiliated with RebbeDrive. Seeking to free-ride on JEM’s reputation and goodwill through communications on RebbeDrive.com and social media, they incorporate JEM’s federally registered trademark (U.S. Reg. 4115121, depicted below; the “JEM Mark”) in their unauthorized posts of JEM’s Copyrighted Works.



8. JEM has informed Defendants of its copyrights and other intellectual property concerns on numerous occasions, explaining how Defendants’ use of the Copyrighted Works and the JEM Mark are both unauthorized and cause significant harm to JEM.

9. Rather than working with JEM to secure licenses or take other steps to ensure that JEM's rights are protected, Defendants have simply ignored JEM's concerns and continue to engage in rampant infringement.

10. Defendants' willful infringement of JEM's intellectual property rights causes even greater harm because it runs counter to the express wishes of the Rebbe himself, who on numerous occasions instructed that his educational teachings be published in an organized fashion, that copyright registrations for such materials be sought, and that their ownership and usage be protected against infringement.

11. JEM's efforts to resolve the matter short of litigation have been ignored by Defendants, thus necessitating this action.

THE PARTIES

12. Plaintiff Jewish Educational Media, Inc. is a 501(c)(3) nonprofit organization organized under the laws of the State of New York with its headquarters at 784 Eastern Parkway, Crown Heights, Brooklyn.

13. Defendant Mendel Mintz is an individual who resides in Crown Heights, Brooklyn. On information and belief, Mr. Mintz operates (or is responsible for the operation of) the infringing website, RebbeDrive.com, which was founded in early or mid-2015, as well as the associated RebbeDrive and Maftaiach apps, the RebbeDrive and RebbeDrive Database YouTube channels, and RebbeDrive's public Google Drive page, Facebook page and Twitter account, along with other social media accounts.

14. On information and belief, Defendant Shmuly Butler is an individual residing in Crown Heights, Brooklyn, who has worked alongside Mintz in connection with the operation of RebbeDrive.

15. On information and belief, RebbeDrive is not an organized entity registered in New York or in any other state. The publicly available address associated with RebbeDrive and RebbeDrive.com is 273 Kingston Avenue, Brooklyn, New York, 11213.

JURISDICTION AND VENUE

16. This is an action for copyright infringement in violation of the Copyright Act, 17 U.S.C. § 501; removal of copyright management information in violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1202; federal trademark infringement, 15 U.S.C. § 1114, false association and false designation of origin under the Lanham Act, 15 U.S.C. § 1125; and unfair competition under New York law.

17. This Court has subject matter jurisdiction over the federal claims pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (original jurisdiction for copyright and trademark claims). Jurisdiction over the related state law claim, which derives from a common nucleus of operative facts with the federal claims, is based on 28 U.S.C. §§ 1367 (supplemental jurisdiction) and 1338(b) (original jurisdiction for unfair competition claims when joined with related claims under the copyright or trademark laws).

18. This Court has personal jurisdiction over Defendants because they are residents of the State of New York. Additionally, Defendants' acts of infringement complained of herein occurred in New York, and Defendants have caused injury to Plaintiff within New York.

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendants reside in this judicial district and a substantial part of the events giving rise to Plaintiff's claim occurred in this judicial district.

FACTS COMMON TO ALL CLAIMS

JEM's Mission and Extensive Efforts to Preserve and Document the Rebbe's Legacy

20. Founded in 1980, JEM is a non-profit organization that produces, preserves, curates, translates, creates, adapts, broadcasts, streams, and otherwise publicly displays and performs the speeches, teachings, and other materials of and about the Rebbe—the late Rabbi Menachem M. Schneerson.

21. The Rebbe has been called the most influential rabbi of the twentieth century, and remains incredibly influential today, even after his passing. After escaping the Nazis in Europe and coming to the United States, the Rebbe worked to revitalize world Jewry at a low point in its history, sending emissaries around the globe to promote Jewish heritage and traditions. Twenty-seven years after his passing, the Rebbe has hundreds of thousands of followers and millions of admirers around the world who consider themselves his disciples, based on their ability to learn directly from him through his printed scholarship and recordings of his teachings.

22. Beginning in 1980, with the Rebbe's own involvement and encouragement, JEM broadcasted the Rebbe's talks live via satellite around the world. Upon the Rebbe's passing in 1994, JEM recognized the importance of using its recordings of the Rebbe as a continued source of research, learning and inspiration. For that reason, JEM initially produced VHS releases featuring excerpts of its materials, newly moderated with a documentary narration.

23. Soon thereafter, JEM began producing a large volume of video releases in English and in Hebrew, including documentaries, inspirational films, and recordings of full-length events.

24. Today, JEM continues to engage in extensive production of Rebbe-related materials, which are made available online and accessed by large audiences at public viewings and on JEM's social media, websites and mobile apps.

25. For example, JEM's "Living Torah" collection is a flagship video series that JEM has produced and released every week for 19 consecutive years in English, Hebrew, French, Spanish, Russian, Portuguese and Hungarian (in addition to the original Yiddish). Living Torah is viewed by several hundred thousand people around the world every week.

26. JEM operates from its production center in Brooklyn, New York and employs a full-time team of some 30 scholars, including archivists, researchers, interviewers, and video editors, alongside a team of creatives that includes producers, film directors, video editors, writers, translators and social media specialists. JEM employs additional part-time employees, who conduct research and specialize in cinematography, production, preservation and translation.

27. The majority of JEM's budget funding comes from donations, which are raised through in-person meetings, a foundation dedicated to JEM's mission, and JEM's website.

28. JEM also is funded through its licensing of its Copyrighted Works to third parties, with licensing fees determined on a case-by-case basis.

JEM's Creation, Acquisition, and Ownership of Copyrights in Video Footage, Photographs, and Audio Recordings of the Rebbe

29. In addition to maintaining its archive of raw, unedited Copyrighted Works and investing in its restoration and preservation, JEM creates new works on an ongoing basis through its extensive production process, which encompasses numerous steps such as researching, writing, directing, and producing films and videos, as well as translating materials and adding subtitles. The process is led by JEM's content professionals, which include researchers, interviewers, directors, video editors, translators, and writers.

30. Over the past twenty-five years, based largely on videos of the Rebbe woven together with other archival materials, narrations and music, JEM's team has produced hundreds of documentary features, inspirational videos and compilations on specific themes or teachings.

31. In addition to materials originally filmed and recorded by JEM, the organization also undertakes extensive efforts to obtain, preserve, catalog, curate, and facilitate access to works created by third parties for which JEM has acquired the copyrights via written assignments.

32. For example, in 2004, JEM launched the Living Archive Preservation Project (the "Living Archive"). After raising substantial funds and investing tremendous financial resources and hundreds of thousands of hours into the project, the Living Archive now includes over 10,000 hours of video footage of the Rebbe's life and the history of the Chabad movement. JEM has worked to organize these materials and make them searchable by users.

33. In a similar vein, JEM has worked tirelessly (and at substantial cost) to acquire, restore, catalog and provide access to hundreds of thousands of photographs of the Rebbe.

34. Over the course of several decades, JEM has also gathered dozens of collections of original audio recordings. Through an extensive and labor-intensive process, JEM has catalogued, restored, remastered and made accessible thousands of videos, films, and clips of the Rebbe's public addresses, one-on-one conversations, prayer services, and other events.

35. For those works in JEM's archives that were originally created by third parties, JEM has meticulously entered into formal agreements to acquire the copyrights in those works.

36. JEM's acquisitions of such works and the copyrights therein frequently require substantial payments. For example, in 2005, JEM paid \$500,000 to acquire two individuals' rights to all videos and photographs they personally filmed of the Rebbe, and in 2010, JEM paid

another individual \$60,000 to obtain the rights to a series of 35mm black-and-white and color photographs.

37. To date, JEM estimates that it has paid over \$750,000 to third parties in exchange for copyrights in original works. Overall investment made into these acquisitions—including working with photographers, legal bills, and the costs of organizing, restoring, cataloguing and preserving the materials, and the fundraising efforts that made these expenditures possible—have amounted to several million dollars.

38. JEM also has invested millions of dollars in developing online databases and platforms to facilitate accessing, searching, and tagging copyrighted materials.

39. In addition to its own productions and print publications, every year JEM's staff researches, translates, produces and otherwise assists non-JEM projects. As part of its educational mission, JEM lends its expertise, experience and archival resources to hundreds of outside projects, including television and film programs, organizational and family video productions, magazines, books, and albums. These services are typically provided for free and, when a fee is charged, it is almost invariably at rates that can only be considered charitable.

40. The fruits of JEM's substantial labor include ownership of 418 copyright registrations encompassing thousands of hours of video and audio recordings, and hundreds of thousands of images of the Rebbe and the Chabad-Lubavitch movement. *See* Exhibit 1. Other JEM works are the subject of pending applications before the Copyright Office.

41. JEM already is aware of many of its works having been infringed by Defendants. A table of certain of those works, including their U.S. copyright registration numbers and registration dates, is included in Exhibit 2 (the "Infringed Works"). This represents only a small portion of the Defendants' large-scale theft of the Copyrighted Works.

**JEM's Publication and Licensing of Works With Copyright
Management Information and Pursuant to Important Terms and Conditions**

42. When JEM makes its materials available online or otherwise distributes or displays its materials, it does so in a manner that makes clear it retains all intellectual property rights in the works and restricts how these works can be used by third parties.

43. For example, in many cases JEM's online and physical media prominently display: (1) watermarks embedded in audiovisual materials; (2) labels (including on videotapes and DVDs) bearing notices such as "Produced & Copyright by JEM" and "Copyright [YEAR] By JEM"; and/or (3) disclaimers at the start of audiovisual materials that state: "Copyright [YEAR] Jewish Educational Media, Brooklyn NY, All Rights Reserved."

44. In addition, where JEM offers its materials online, it includes Terms and Conditions for the use of its intellectual property. These Terms and Conditions remind users that JEM does not permit these works to be freely taken and used by third parties without permission:

"Unless otherwise stated, Jewish Educational Media and/or [its] licensors own the intellectual property rights for all material on Jewish Educational Media. All intellectual property rights are reserved. You may view and/or print pages from <https://Ashreinu.app>, <https://jemstream.com>, JEM.tv, all other Jewish Educational Media websites and apps, and Jewish Educational Media's content on any other sites for your own personal use subject to restrictions set in these terms and conditions."

"[Users] must not:

1. Republish material from . . .
2. Sell, rent or sub-license material from . . .
3. Reproduce, duplicate or copy material from . . . [or]
4. Scrape, download, use automated systems or software to extract data, content, media, or metadata from <https://Ashreinu.app>, <https://JEMstream.com>, JEMstream apps, other JEM websites and apps, and any other sites containing Jewish Educational Media's content including but not limited to JEMCentral.com, JEMstore.com YouTube, and Chabad.org.
5. Redistribute content from Jewish Educational Media (unless content is specifically made for redistribution)."

45. As JEM has developed a global reputation and brand recognition, it also has taken steps to protect its valuable trademark rights.

46. JEM is the owner of a federal trademark registration in the JEM Mark, issued by the U.S. Patent and Trademark Office (“PTO”) on March 20, 2012 (No. 4115121). A copy of the Certificate of Registration for the mark is attached as Exhibit 3. The JEM Mark, too, is prominently displayed as a watermark on JEM’s produced audiovisual materials.

47. Moreover, when JEM licenses use of the Copyrighted Works to third parties, such licenses are subject to express limitations on use. For example, licensees are often required to display a credit to JEM and the original photographer on or near every licensed photo, and delete all photographs from the publisher’s system upon completion of each publication.

Defendants’ Willful Infringement of JEM’s Copyrighted Works

48. Defendants operate an online database containing thousands of photographs and audio and video recordings of the Rebbe, along with the Rebbe’s publications and teachings. Promoting themselves as an online Chabad database, Defendants operate the RebbeDrive.com website and associated YouTube channels, mobile apps, social media accounts, and a public Google Drive page.

49. Since at least as early as 2016, Defendants have been copying and displaying on RebbeDrive.com and related sites JEM’s copyrighted photographs and video footage of the Rebbe, in both edited and unedited form. Hundreds of these Copyrighted Works are available on Defendants’ infringing sites.

50. While some materials posted on RebbeDrive.com and related sites retain the JEM Mark, in other cases Defendants deface or entirely scrub the JEM Mark. In cases where Defendants use JEM materials that have been watermarked, Defendants often crop the video in

order to remove the JEM Mark or use other methods to ensure that the JEM Mark cannot be seen. This reflects Defendants' efforts to remove JEM's copyright management information and misrepresent Defendants' purported rights in the content.

51. In many cases, in addition to publishing underlying videos without authorization and removing the JEM Mark, Defendants retain the subtitles containing JEM's original translations, thereby free-riding off JEM's significant translation efforts and expertise.

52. JEM did not authorize or permit Defendants to utilize its Copyrighted Works.

53. On information and belief, Defendants have obtained the Copyrighted Works through a variety of methods, including from unpublished JEM videos, JEM's website, prior JEM broadcasts and publications, and individuals and entities who had received restored versions of Rebbe-related materials from JEM.

54. Defendants also have incorporated JEM's copyrighted photographs of the Rebbe into two children's books, which are sold in local Judaica stores: "Tishrei with the Rebbe," released in October 2019, and "Chanukah with the Rebbe," released in December 2019. These uses, as well, were without JEM's authorization.

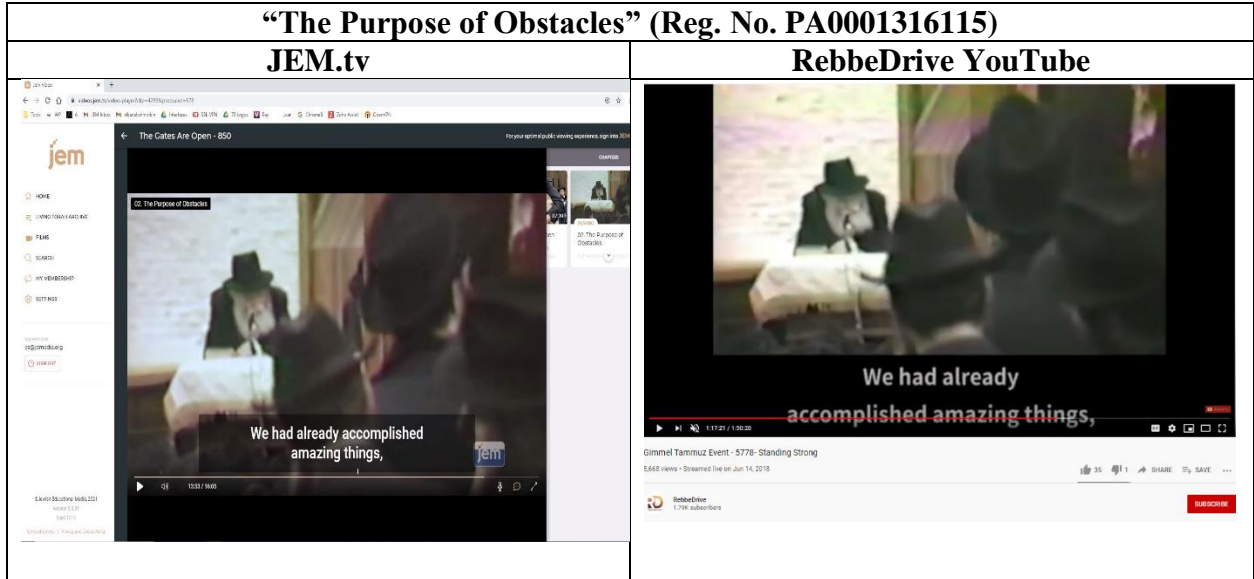
55. Defendants extensively promote their infringing website throughout the Chabad community. In particular, Mintz, Butler, and others regularly send WhatsApp communications to the Chabad community to promote new releases on RebbeDrive, as well as promote JEM's materials on news and other websites with RebbeDrive's own logo.

56. Indeed, Defendants flaunt their unlawful activity. For example, in one instance in March 2019, mere hours after JEM published a newly-restored audio recording of the Rebbe, Defendants published a press release not only falsely taking credit for the work, but also taunting JEM by stating that the recording was made in honor of JEM's outside counsel (identified by his

name) who had previously sent cease-and-desist letters concerning rampant infringement of JEM’s works.

57. Below are three examples of RebbeDrive’s infringement of JEM’s copyrighted videos. Each RebbeDrive YouTube screenshot comes from its posted video “Gimmel Tammuz Event - 5778- Standing Strong,” which was publicly displayed at an event on June 14, 2018. These video materials belong to JEM, and JEM wrote and edited the accompanying translations, which Defendants simply retyped in the videos they posted. Some of Defendants’ videos display the JEM Mark, while in other cases, the JEM Mark has been removed.





58. Below are two examples of Defendants’ infringement of JEM’s copyrighted photographs.



Defendants Continue to Flagrantly Infringe JEM’s Copyrights Despite Being Notified Repeatedly That Their Conduct Is Unlawful

59. JEM first informed Mintz that his uses of JEM’s Copyrighted Works on RebbeDrive.com and YouTube were unauthorized on July 4, 2016. JEM therefore requested that Mintz remove the infringing images.

60. Mintz did not comply with JEM's request. JEM made several subsequent attempts to communicate with Mintz, and sought third party intervention in the hope that the matter would be amicably resolved.

61. On February 20, 2017, JEM sent Mintz a follow-up letter, reiterating the demand that the infringement stop and proposing to meet in person to reach a mutually acceptable resolution that would sufficiently protect JEM's intellectual property rights and interests. After months of delay and correspondence, in March 2017, Mintz and Butler finally came to a meeting with JEM, but refused to cooperate, and indicated they would not remove any of the infringing material.

62. JEM thus was forced to turn to the Beis Din of the Central Committee of Chabad-Lubavitch Rabbis in the United States and Canada (the "Beis Din"), which is a rabbinical court that serves as a forum for arbitrating disputes within the Chabad-Lubavitch community in order to resolve such disputes without requiring the intervention of non-rabbinical, secular courts. In fact, the Rebbe himself pointed to this particular Beis Din as arbiters of disputes relating to Chabad-Lubavitch and the publication of his own teachings.

63. The Beis Din issued summonses to Mintz and Butler, but both Defendants ignored and later rebuffed them, while continuing to publish additional copyrighted JEM materials.

64. After first denying ownership of the infringing sites, then delaying and obfuscating for several months, Defendants responded that they refused to respect the summons because the Beis Din had no jurisdiction over the case.

65. In light of Defendants' noncompliance and deception, the Beis Din granted JEM permission to proceed with legal action against Defendants in federal court. It is especially

unfortunate that as a result of Defendants' conduct, the issue of ownership of recordings of the Rebbe's own voice and image must be brought to this court.

JEM's Ongoing Injury and Harm Due to Defendants' Conduct

66. Despite JEM's best efforts to resolve the matter and its willingness to discuss licensing the Infringed Works, Defendants have maintained and created unauthorized copies of the Copyrighted Works by posting infringing materials on RebbeDrive.com, Google Drive, YouTube, and other social media platforms. Defendants continue to post more unauthorized content on an ongoing basis, free-riding off of JEM's immense expenditure of effort and resources in collecting, preserving, restoring, and authoring the Copyrighted Works.

67. Moreover, as detailed above, in some instances Defendants misrepresent to the public that RebbeDrive is affiliated with, or sponsored or approved by JEM, thereby leveraging its goodwill in the community.

68. Defendants have profited from their copyright and trademark infringement and other misconduct by using JEM materials to promote and advertise RebbeDrive, including on ChabadInfo.com, its mobile apps, and social media platforms such as Facebook, YouTube, and Twitter. In addition, Defendants have incorporated JEM's Copyrighted Works into other products, such as the children's books described above in Paragraph 54.

69. Defendants also use many of JEM's Copyrighted Works to promote and operate RebbeDrive.com in order to solicit donations from RebbeDrive.com visitors. The "Donate" link on the RebbeDrive.com homepage leads to a PayPal site, which currently indicates the proceeds go to Ohalei Yosef Yitzchak, Inc.

70. Defendants' unlawful conduct irreparably harms (as well as financially impacts) JEM's mission in numerous ways, including by disrupting the market for licensing JEM's works, hampering JEM's ability to fundraise, and creating consumer confusion.

CLAIMS FOR RELIEF

Count I – Copyright Infringement under 17 U.S.C. § 101

71. Plaintiff realleges and incorporates by reference the preceding paragraphs of its Complaint as if fully set forth herein.

72. The Infringed Works that are the subject of this action include at least 49 videos or video collections and 13 photographs of the Rebbe, many of which have been infringed in multiple instances by Defendants (*see* Exhibit 2). The Infringed Works represent only a subset of the hundreds of Copyrighted Works, including but not limited to the 418 works for which Plaintiff currently owns copyright registrations (*see* Exhibit 1). Plaintiff has identified numerous other Copyrighted Works that have been infringed by Defendants, and has copyright registration applications for such Copyrighted Works pending before the U.S. Copyright Office. Plaintiff reserves the right to include these as Infringed Works once they have been registered. On information and belief, discovery will bear out that numerous other Copyrighted Works have been infringed as well.

73. Plaintiff's copyrights in and to the Infringed Works have been registered with the U.S. Copyright Office. Copies of these registrations are included in Exhibit 4.

74. Plaintiff did not authorize, permit, or allow in any manner the reproduction, preparation of derivative works, distribution, public performance, or public display of the Infringed Works by Defendants.

75. As a result of this copyright infringement, Plaintiff has suffered irreparable injury and, unless Defendants' infringement is enjoined by the Court, Plaintiff will continue to suffer

irreparable harm. There is no adequate remedy at law for the harm caused by Defendants' infringing conduct.

76. Defendants' copyright infringement has been willful and intentional, and Defendants continue to violate JEM's rights despite numerous attempts by JEM to amicably resolve the matter through correspondence, in-person meetings, and arbitration in the Beis Din.

Count II – Removal of Copyright Management Information under 17 U.S.C. § 1202

77. Plaintiff realleges and incorporates by reference the preceding paragraphs of its Complaint as if fully set forth herein.

78. When Plaintiff published the Infringed Works, in certain works it included copyright management information under 17 U.S.C. § 1202(b), including (1) watermarks embedded in audiovisual materials; (2) labels (including on videotapes and DVDs) bearing notices such as "Produced & Copyright by JEM" and "Copyright [YEAR] By JEM"; and (3) disclaimers at the start of audiovisual materials that state: "Copyright [YEAR] Jewish Educational Media, Brooklyn NY, All Rights Reserved."

79. Defendants intentionally and knowingly removed such copyright management information when unlawfully copying and displaying certain of the Infringed Works on RebbeDrive.com, Google Drive and YouTube. Specifically, Defendants either defaced or entirely removed the JEM Mark from these Infringed Works.

80. Defendants' falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff, and was done with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Infringed Works.

Count III – Federal Trademark Infringement under 15 U.S.C. § 1114

81. Plaintiff realleges and incorporates by reference the preceding paragraphs of its Complaint as if fully set forth herein.

82. Plaintiff owns the JEM Mark, for which it has obtained a federal trademark registration.

83. Plaintiff uses the JEM Mark in commerce, in connection with the distribution of its goods and services.

84. The trademark is valid and enforceable against all parties, including Defendants.

85. Defendants have infringed the JEM Mark in violation of 15 U.S.C. § 1114(a) by using and continuing to use it in interstate commerce, in connection with audiovisual materials they have posted on RebbeDrive.com, Google Drive and YouTube.

86. Defendants' actions are likely to cause, have caused, and will continue to cause confusion, mistake, and deception in the minds of consumers as to the source or origin of Defendants' goods, in violation of 15 U.S.C. § 1114.

87. As a result of this trademark infringement, Plaintiff has suffered irreparable injury and, unless Defendants' infringement is enjoined by the Court, Plaintiff will continue to suffer irreparable harm. There is no adequate remedy at law for the harm caused by Defendants' infringing conduct.

88. Defendants acted with full knowledge that their actions would cause confusion, mistake, and deceive consumers, which constitutes a willful violation of the Lanham Act.

Count IV – False Association/False Designation of Origin under 15 U.S.C. § 1125

89. Plaintiff realleges and incorporates by reference the preceding paragraphs of its Complaint as if fully set forth herein.

90. Defendants have used and continue to use Plaintiff's federally registered marks without Plaintiff's consent. Through their online communications, press releases and printed materials, Defendants use Plaintiff's marks in order to create a false association between JEM and RebbeDrive, as well as to suggest that JEM's materials are in fact owned by RebbeDrive, creating a false designation of origin.

91. Defendants' use of the JEM Mark has caused and is likely to continue to cause confusion or mistake, or to deceive consumers and potential consumers, the public, and the trade concerning an affiliation, connection, or association between Defendants and Plaintiff when there is no such affiliation, connection, or association.

92. As a result, Plaintiff has suffered irreparable injury and, unless Defendants' infringement is enjoined by the Court, Plaintiff will continue to suffer irreparable harm. There is no adequate remedy at law for the harm caused by Defendants' infringing conduct.

93. Defendants acted willfully, with full knowledge of Plaintiff's rights in the JEM Mark, and those acts constitute a willful violation of the Lanham Act.

Count V – Unfair Competition under New York Law

94. Plaintiff incorporates by reference the allegations in the preceding paragraphs of the Complaint.

95. Defendants have used and currently use the JEM Mark to identify themselves and the source of their goods. Through their online communications, press releases and printed materials, Defendants falsely suggest that there is an association between JEM and Defendants with respect to their goods.

96. Defendants' use of JEM's Mark has incorporated the goodwill of Plaintiff, which includes the acquired goodwill of the JEM Mark and Plaintiff's reputation in connection with the

materials it owns and the services it provides, which the Defendants have benefited from in connection with operating RebbeDrive.com and related sites.

97. Defendants' continued unauthorized use of the JEM Mark is likely to and is intended to cause confusion or mistake or to deceive as to the affiliation, connection, or association between Defendants and Plaintiff as to the possible origin, sponsorship or approval of the Defendants' goods by Plaintiff.

98. Defendants' use of the JEM Mark misrepresents that the Defendants are affiliated with Plaintiff, which constitutes unfair competition under New York common law.

99. Defendants have continued and are likely to continue in their course of unfair competition. As a result, Plaintiff has suffered irreparable injury and, unless Defendants' unfair competition practices are enjoined by the Court, Plaintiff will continue to suffer irreparable harm. There is no adequate remedy at law for the harm caused by Defendants' unfair competition practices.

REQUEST FOR RELIEF

WHEREFORE, JEM prays for the following relief:

A. Awarding monetary damages in an amount to be determined, including but not limited to actual damages, Defendants' profits, and enhanced, statutory, and/or treble damages as available under the Copyright Act, the Lanham Act, and New York law;

B. Awarding costs of litigation and reasonable attorney's fees under the Copyright Act, the Lanham Act, and New York law;

C. Permanently enjoining Defendants from (1) any and all use of the Copyrighted Works, including without limitation the Infringed Works, and/or from reproducing, preparing derivative works of, distributing copies of, publicly performing, and publicly displaying such works without Plaintiff's authorization; (2) any and all use of the JEM Mark,

including on RebbeDrive.com, Google Drive, YouTube, and all related sites and social media platforms, as well as in online communications, press releases and printed materials; (3)

directing, inducing, or facilitating the foregoing conduct by third parties; and

D. Any other relief that this Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury of all issues so triable in this action.

DATED: February 23, 2021
New York, New York

/s/ Douglas R. Nemec

Douglas R. Nemec
Jordan A. Feirman
Shelli Gimelstein
One Manhattan West
New York, NY 10001-8602
(212) 735-3000
douglas.nemec@probonolaw.com
jordan.feirman@probonolaw.com
shelli.gimelstein@probonolaw.com

*Attorneys for Plaintiff Jewish Educational
Media, Inc.*