

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

SEMORAN, LLC,

Plaintiff,

vs.

CASE NO. 6:07-cv-1362-ORL-31KRS

FLORIDA MEDIA GROUP, LLC,

Defendant.

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**ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM**

Defendant Florida Media Group, LLC, in paragraphs corresponding to the paragraphs of the First Amended Complaint, answers the allegations as follows:

**STANDING**

1. This is an action, *inter alia*, for declaratory and supplemental relief pursuant to Ch. 86, *Fla. Stat.* (2007), asking the Court to declare the respective rights, status and other equitable and legal relations between Plaintiffs and Defendant, with respect to their actions.

**ANSWER:** Defendant admits that Plaintiff claims that this is an action for declaratory and supplemental relief pursuant to Florida Statutes Chapter 86.

2. The Plaintiff has standing to bring this action for declaratory relief under Chapter 86.011, *Fla. Stat.* (2007), *et. seq.* and under Chapter 495.001, *Fla. Stat.* (2007), *et. seq.*, as the Plaintiff is under a demonstrable apprehension of a lawsuit threatened to be filed by the Defendant, given the content of the demand letter sent on July 16, 2007, (attached as Exhibit B) and due to verbal promises of an imminent suit made on July 31, 2007.

**ANSWER:** Denied.

3. Nevertheless, even without this reasonable apprehension, the Plaintiff would have standing to seek cancellation of the FLORIDA WEEKLY mark, as the Plaintiff has been damaged by this erroneous and/or fraudulent grant of trademark rights.

**ANSWER:** Denied.

### **THE PARTIES**

4. SEMORAN is a Limited Liability Company organized and existing under the laws of the state of Florida, located at 931 N. State Road 434, Suite 1201-350, Altamonte Springs, FL 32714.

**ANSWER:** Defendant is without knowledge or information sufficient to form a basis as to the truth or falsity of the allegations in paragraph 4, and therefore denies same.

5. FMG is a Limited Liability Company organized and existing under the laws of the state of Florida with a registered address of 201 North Franklin Street, Suite 2000, Tampa, FL 33602, that purports to do business throughout this state, including in this judicial district.

**ANSWER:** Defendant admits that Florida Media is a Florida limited liability company with a registered address of 201 North Franklin Street, Suite 2000, Tampa, Florida 33602, that does business in Florida.

### **VENUE**

6. Venue in this district is proper because the harm that will be suffered in the absence of the relief sought will occur in this judicial district, and thus the Defendant's actions have had a palpable effect upon a corporate resident in this judicial district.

**ANSWER:** Denied.

7. Additionally, the Defendant has admitted to conducting business throughout the state of Florida, including in this judicial district.

**ANSWER:** Denied, except it is admitted that Defendant does business in Florida.

**FACTUAL ALLEGATIONS**

I. Plaintiff's Business

8. In 2004, Plaintiff SEMORAN began conceptualizing an online business, and on April 22, 2004, the Plaintiff purchased a web server for this business.

**ANSWER:** Denied.

9. In late September, 2004, SEMORAN, through its Director, Kenneth Lima (hereinafter "Lima") devised the "Florida Weekly" online newspaper concept and began acquiring domain names for the purpose of launching this concept.

**ANSWER:** Denied.

10. On or about September 27, 2004, SEMORAN purchased the Internet domain name www.floridaweekly.net.

**ANSWER:** Defendant is without knowledge or information sufficient to form a basis as to the truth or falsity of the allegations in paragraph 10 and therefore denies same.

11. On or about September 27, 2004, SEMORAN purchased the Internet domain name www.floridaweekly.org.

**ANSWER:** Defendant is without knowledge or information sufficient to form a basis as to the truth or falsity of the allegations in paragraph 11 and therefore denies same.

12. On or about September 27, 2004, SEMORAN purchased the Internet domain name www.floridaweekly.info.

**ANSWER:** Defendant is without knowledge or information sufficient to form a basis as to the truth or falsity of the allegations in paragraph 12 and therefore denies same.

13. On or about September 27, 2004, SEMORAN purchased the Internet domain name www.floridaweekly.biz.

**ANSWER:** Defendant is without knowledge or information sufficient to form a basis as to the truth or falsity of the allegations in paragraph 13 and therefore denies same.

14. On or about September 27, 2004, SEMORAN purchased the Internet domain name www.floridaweekly.us.

**ANSWER:** Defendant is without knowledge or information sufficient to form a basis as to the truth or falsity of the allegations in paragraph 14 and therefore denies same.

15. On or about September 28, 2004, SEMORAN purchased the Internet domain name www.floridaweekly.com.

**ANSWER:** Defendant is without knowledge or information sufficient to form a basis as to the truth or falsity of the allegations in paragraph 15 and therefore denies same.

16. On or about September 28, 2004, SEMORAN redirected all of the aforementioned domain names to www.floridaweekly.com in order to provide unified Internet traffic flow to the flagship domain name in the Plaintiffs publishing plan.

**ANSWER:** Defendant is without knowledge or information sufficient to form a basis as to the truth or falsity of the allegations in paragraph 16 and therefore denies same.

17. On or about November 8, 2004, Plaintiff began making preparations to launch its online news and information website, including the establishment of e-mail accounts, name servers, and other technical architecture, with a possible print publication to follow, (depending on the success of the online endeavor).

**ANSWER:** Denied.

18. This endeavor was to generate a profit by selling advertisements based upon the amount of web traffic driven to www.floridaweekly.com.

**ANSWER:** Denied.

19. Stage one (1) of this project was the generation of web traffic to sell to potential advertisers, which is (in itself) a good or service within the meaning of the Florida Trademark Act and the federal Lanham Act.

**ANSWER:** Denied.

20. At this point, Plaintiff began using the mark FLORIDA WEEKLY, in connection with goods or services in this state and nationwide.

**ANSWER:** Denied.

21. On or about November 16, 2004, SEMORAN moved the aforementioned domains to a dedicated web server in order to handle the predicted traffic.

**ANSWER:** Denied.

22. On or about November 16, 2004, Plaintiff launched stage two (2) of its project, the FLORIDA WEEKLY website, a true and correct copy of which is attached as Exhibit A.

**ANSWER:** Denied.

23. On or about June 23, 2005, SEMORAN and Lima designed FLORIDAWEEKLY.com promotional materials, including banner ads and business cards, and began marketing FLORIDAWEEKLY.com to individuals and businesses in interstate and intrastate commerce. These efforts generated even greater web traffic - the most valuable commodity in the online sales and marketing business.

**ANSWER:** Denied.

24. On or about June 23, 2005, the Plaintiff announced to the world that SEMORAN claimed rights in the mark FLORIDA WEEKLY by affixing the <sup>TM</sup> symbol to the name and the logo on the website FLORIDAWEEKLY.com.

**ANSWER:** Denied.

25. At this point, the use of the mark FLORIDA WEEKLY by the Plaintiff in intrastate and interstate commerce was legally established.

**ANSWER:** Denied.

26. On July 29, 2006, SEMORAN completed the establishment of the electronic magazine concept for FLORIDAWEEKLY.com.

**ANSWER:** Denied.

27. In May of 2007, the Plaintiff sought financial support from a variety of investors for this endeavor. Given the depth of the Plaintiff's endeavors and plans and desire for control of the concept, an agreement could not be reached.

**ANSWER:** Denied.

28. On or about July 5, 2007, the Plaintiff re-initiated its business plan to launch an active website at FLORIDAWEEKLY.com, restoring the old site and creating the architecture for the third (3rd) phase of the project.

**ANSWER:** Denied.

29. On July 8, 2007, the Plaintiff moved FLORIDAWEEKLY.com to a new dedicated Internet web server.

**ANSWER:** Denied.

30. At this time, the Plaintiff has entered phase three (3) and currently maintains an active website at FLORIDAWEEKLY.com in the form of an online publication about news and events in Florida. This publication, published weekdays, provides news and information from and about Florida, and provides links to other Florida-based websites, as well as providing original copy and content produced by SEMORAN.

**ANSWER:** Denied.

31. Phase three (3) of the project has resulted in even greater web traffic, generating even more product (Internet web traffic) for the Plaintiff to sell.

**ANSWER:** Denied.

32. Phase four (4) of the project has not yet been implemented. Phase four (4) of the project is a plan to sell advertising space on SEMORAN's websites including, but not limited to, FLORIDAWEEKLY.com.

**ANSWER:** Denied.

33. During the time of the Plaintiffs use, the Plaintiff established trademark rights through use in the name FLORIDA WEEKLY and in the FLORIDA WEEKLY logo attached as Exhibit A.

**ANSWER:** Denied.

34. In any brief period during which the FLORIDAWEEKLY.com website was inoperative, Plaintiff never intended [sic] abandon any accrued trademark rights. See *Fla. Stat.* § 495.011(i)(a).

**ANSWER:** Denied.

## II. **The Defendant's Conduct**

35. On June 15, 2006, FLORIDAWEEKLY.com received an Internet Protocol ("IP") visit from an unknown individual in Fort Myers. The IP address has been traced to a location near the Defendant's office and/or residence.

**ANSWER:** Defendant is without knowledge or information sufficient to form a basis as to the truth or falsity of the allegations in paragraph 35, and therefore denies same.

36. Plaintiff is informed and believes, and based upon such information and belief hereby alleges that this visit was by the Defendant or one of the Defendant's employees, corporate officers, or other agents, thus establishing actual knowledge on the part of the Defendant of the Plaintiff's claim to the FLORIDA WEEKLY trademark.

**ANSWER:** Denied.

37. On or about June 25, 2007, an individual identifying himself as "Doug Henderson" made an offer to purchase FLORIDAWEEKLY.com. This offer was ignored, given the ongoing work on the project.

**ANSWER:** Denied, except it is admitted that Doug Henderson made an offer to purchase the domain name FLORIDAWEEKLY.com on or about June 25, 2007.

38. On July 2, 2007, the Plaintiff received a second purchase offer from "Doug Henderson," and responded with certainty that the domain name FLORIDAWEEKLY.com was not for sale.

**ANSWER:** Denied, except it is admitted that Doug Henderson made an offer to purchase the domain name FLORIDAWEEKLY.COM on or about July 2, 2007 and that such offer was declined.

39. The Defendant believes that the individual who identified himself as “Doug Henderson” is affiliated with the Defendant and is prepared to explore this issue through discovery.

**ANSWER:** Denied, except it is admitted that Florida Media asked Doug Henderson to inquire into purchasing FLORIDAWEEKLY.COM

40. On July 16, 2007, the Plaintiff received the attached cease and desist letter from the Defendant’s counsel via e-mail. See Exhibit B. Due to fear of imminent litigation, this brought phase four (4) of the project to a halt.

**ANSWER:** Denied, except the document speaks for itself.

41. Plaintiff is informed and believes, and based upon such information and belief hereby alleges that on or about July 14, 2006, the Defendant or the Defendant’s agent purchased the domain name *www.fortmyersfloridian.net*.

**ANSWER:** Denied.

42. On August 8, 2006, the Defendant or the Defendant’s agent filed a fictitious name application for “*Fort Myers Floridian*” with the Florida Department of State, Division of Corporations.

**ANSWER:** Denied.

43. Plaintiff is informed and believes, and based upon such information and belief hereby alleges that on October 4, 2006, the Defendant or the Defendant’s agent purchased the domain “*thefortmyersfloridian.com*.”

**ANSWER:** Denied.



44. On December 8, 2006, the Defendant or the Defendant's agent filed a state trademark application for "*Fort Myers Floridian*" with the Florida Department of State, Division of Corporations.

**ANSWER:** Denied.

45. Plaintiff is informed and believes, and based upon such information and belief hereby alleges that on January 13, 2007, the Defendant or the Defendant's agent purchased the domain name *www.fortmyersweekly.com*.

**ANSWER:** Denied.

46. At some point between January 13, 2007 and July 26, 2007, the Defendant came to realize that *www.floridaweekly.com* was a valuable domain name.

**ANSWER:** Denied, except it is admitted that FLORIDAWEEKLY.com infringes on Defendant's mark FLORIDA WEEKLY.

47. On January 31, 2007, more than two years after the Plaintiff's business was established and began using the FLORIDAWEEKLY.com name, the Defendant was created as a Limited Liability Company under the Florida Department of State, Division of Corporations.

**ANSWER:** Denied, except it is admitted that Defendant is a Florida limited liability company.

48. On February 2, 2007, approximately two and a half years after the Plaintiff established its business, and after apparently working through at least two other name changes, the Defendant filed a fictitious name application for "*Florida Weekly*" with the Florida Department of State, Division of Corporations.

**ANSWER:** Denied, except it is admitted that Defendant filed a fictitious name application for "Florida Weekly" with the Florida Department of State, Division of Corporations on February 2, 2007.

49. On that same date, the Defendant filed a fictitious name application for “*Fort Myers Florida Weekly*” with the Florida Department of State, Division of Corporations.

**ANSWER:** Denied, except it is admitted that Defendant filed a fictitious name application for "Fort Myers Florida Weekly" with the Florida Department of State, Division of Corporations on February 2, 2007.

50. On February 21, 2007, the Defendant filed a Florida trademark application for “*Florida Weekly*” with a claimed date of first use of February 1, 2007.

**ANSWER:** Denied, except it is admitted that Defendant filed a Florida trademark application for "Florida Weekly" with a date of first use of February 1, 2007.

51. This application is void for multiple reasons discussed *infra*.

**ANSWER:** Denied.

52. Even if the registration were not void, the mark itself is merely descriptive, and has not generated adequate secondary meaning to be protected as a trademark.

**ANSWER:** Denied.

53. Plaintiff is informed and believes, and based upon such information and belief hereby alleges that this trademark application was a mere subterfuge for the Defendant’s current efforts to hijack the lawfully obtained domain name, *www.floridaweekly.com*, from the Plaintiff, at a cost well below its actual value and to drive a potential competitor out of business through improper means.

**ANSWER:** Denied.

54. Despite the Defendant’s claimed date of first use of February 1, 2007 on its trademark application, the Defendant did not publish its debut edition until April 5, 2007, and that publication was called “*The Fort Myers Florida Weekly*,” and not FLORIDA WEEKLY.

**ANSWER:** Denied.

55. Some time after February 2007, the Plaintiff issued numerous press releases and marketing materials identifying its product as *The Fort Myers Florida Weekly*, not FLORIDA WEEKLY.

**ANSWER:** Denied.

56. The Fort Myers Chamber of Commerce identifies the Defendant's publication as "*Fort Myers Florida Weekly*." See Exhibit C.

**ANSWER:** Denied, except the document speaks for itself.

57. Editor and Publisher Magazine identifies the Defendant's publication as the Fort Myers Florida Weekly, and upon information and belief, Editor and Publisher identifies the Defendant's publication in this manner due to a presumed press release issued by the Defendant. See Exhibit D.

**ANSWER:** Denied.

58. The Defendant issued a press release on April 4, 2007 that identifies the Defendant's publication as "Fort Myers Florida Weekly." See Exhibit E.

**ANSWER:** Denied.

59. As late as the date of the Defendant's demand letter, July 16, 2007, and as late as the date of the first contact between the parties, the Defendant's own publication identified itself as the Fort Myers Florida Weekly. See Exhibit F and Exhibit G.

**ANSWER:** Denied.

60. The Defendant's own Corporate Fact Sheet identifies the Defendant's publication as the Fort Myers Florida Weekly. See Exhibit H.

**ANSWER:** Denied.

61. The Defendant's marketing materials, downloaded from the Defendant's website, clearly demonstrate that the Defendant identifies its publication as the Fort Myers Florida Weekly. See Exhibit I.

**ANSWER:** Denied.

62. The Defendant's classified order form identifies the Defendant's publication as the Fort Myers Florida Weekly. The Defendant has produced at least four television commercials referring to the Defendant's publication or "The Fort Myers Florida Weekly." See <http://www.youtube.com/user/jpgaddis>.

**ANSWER:** Denied.

63. The Defendant is not known by "FLORIDA WEEKLY" in interstate nor intrastate commerce.

**ANSWER:** Denied.

64. The public does not recognize FLORIDA WEEKLY as a source identifier for the Defendant's goods or services.

**ANSWER:** Denied.

65. The Defendant self-identifies as "Fort Myers Florida Weekly" in most of its press materials, in its publication, and in its public relations materials.

**ANSWER:** Denied.

66. At best, the Defendant has only used FLORIDA WEEKLY as an infringement upon the Plaintiff's rights, or in its descriptive sense, but the Defendant has never used "FLORIDA WEEKLY" as a trademark.

**ANSWER:** Denied.

67. On or about January 26, 2007, the Defendant registered the domain name [www.florida-weekly.com](http://www.florida-weekly.com).

**ANSWER:** Denied, except it is admitted the Defendant has been assigned the rights to [www.florida-weekly.com](http://www.florida-weekly.com).

68. The domain name is the Plaintiff's domain name with a hyphen inserted in between the words "florida" and "weekly."

**ANSWER:** Denied, except it is admitted that Plaintiff registered the domain name www.floridaweekly.com and Defendant has been assigned the rights to the domain name www.florida-weekly.com.

69. The Defendant's domain name, www.florida-weekly.com, is confusingly similar to the Plaintiff's pre-existing web domain of www.floridaweekly.com, and the Plaintiff's publication name, FLORIDA WEEKLY.

**ANSWER:** Denied, except it is admitted that any use by Plaintiff of the mark FLORIDA WEEKLY is confusingly similar to Defendant's mark FLORIDA WEEKLY.

70. Plaintiff is informed and believes and based upon such information and belief hereby alleges that prior to this registration the Defendant developed actual knowledge of the Plaintiff's domain name and business, since it defies common sense to believe that the Defendant did not initially attempt to register www.floridaweekly.com, and in doing so the Defendant likely visited the Plaintiff's website.

**ANSWER:** Denied.

71. Given that the non-hyphenated domain name is clearly superior for attracting web traffic, it is believed that the Defendant's officers and directors were aware of the existence of the Plaintiff well before the Defendant's corporation even existed.

**ANSWER:** Denied.

72. If any confusion exists, the Defendant knowingly created a likelihood of confusion between FLORIDAWEEKLY.com and The Fort Myers Florida Weekly, not the other way around.

**ANSWER:** Denied.

73. The registration of www.florida-weekly.com violates the Plaintiff's trademark rights, and is confusingly similar to the Plaintiff's previously-used trademark, "FLORIDA WEEKLY" and Plaintiff's previously-used domain name, www.floridaweekly.com.

**ANSWER:** Denied.

74. Nevertheless, on or about July 16, 2007, the Defendant sent a letter to the Plaintiff, *inter alia*, threatening a lawsuit for trademark infringement.

**ANSWER:** Denied, except it is admitted that the document speaks for itself.

75. Again on July 31, 2007, the Defendant (through counsel) assured the Defendant that a lawsuit was imminent.

**ANSWER:** Denied.

76. The aforementioned threatened lawsuit has placed the Plaintiff in a position of very real apprehension on an imminent lawsuit that could adversely affect the Plaintiff's business plans. The Plaintiff is a small business that is fearful of placing more financial and sweat capital into the FLORIDA WEEKLY.com endeavor whilst the threat of an imminent lawsuit hangs over SEMORAN'S head.

**ANSWER:** Denied.

77. Plaintiff is informed and believes, and based upon such information and belief hereby alleges that Defendant's motivation in threatening suit was not to protect any valid trademarks.

**ANSWER:** Denied.

78. Instead, Defendant's conduct amounts to an attempt at "reverse domain name hijacking." See 15 U.S.C. § 1114(D)(i)(11)(v).

**ANSWER:** Denied.

79. The Plaintiff seeks a declaratory judgment that its use of the term "FLORIDA WEEKLY" in connection with the floridaweekly.com website, including all of the aforementioned associated domain names, does not infringe upon any valid trademarks.

**ANSWER:** Denied.

80. All conditions precedent to the bringing of this action have been performed, waived or excused.

**ANSWER:** Denied.

81. Plaintiff has hired the undersigned attorneys to prosecute this action, and have agreed to pay said attorneys a reasonable fee for their services.

**ANSWER:** Defendant is without knowledge or information sufficient to form a basis as to the truth or falsity of the allegations in paragraph 81 and therefore denies same.

**COUNT I – FRAUDULENT REGISTRATION**  
**Fla. Stat. § 495.121(2007) and Fla. Stat. § 495.101(d)(d)(2007)**

82. Plaintiff hereby re-alleges and restates paragraphs 1-81 as if they were fully set forth herein in their entity.

**ANSWER:** Defendant adopts its responses to paragraphs 1 through 81.

83. Florida State Trademark Reg. No. T07000000301 was obtained by the Defendant through fraudulent means, and this fraud is hereinafter specifically pled.

**ANSWER:** Denied.

84. The Defendant provided false information in its application for the state trademark registration for “FLORIDA WEEKLY,” and therefore this registration is void *ab initio* and must be cancelled.

**ANSWER:** Denied.

85. The Defendant was aware, or should have been aware, that the Plaintiff had the right to use the mark FLORIDA WEEKLY in this state, yet signed a sworn affidavit to the contrary when applying for Florida State Trademark Reg. No. T07000000301. In the trademark registration context, this constitutes fraud.

**ANSWER:** Denied.

86. The Defendant was aware, or should have been aware, that third parties had the right to use the mark FLORIDA WEEKLY in this state, yet signed a sworn affidavit to

the contrary when applying for Florida State Trademark Reg. No. T07000000301. In the trademark registration context, this constitutes fraud.

**ANSWER:** Denied.

87. The Defendant was aware, or should have been aware, that the Defendant had not used the mark FLORIDA WEEKLY in this state as of February 1, 2007, yet signed a sworn declaration to the contrary when applying for Florida State Trademark Reg. No. T07000000301. In the trademark registration context, this constitutes fraud.

**ANSWER:** Denied.

88. The Defendant's application for this mark, even though the Defendant identifies itself as the "Fort Myers Florida Weekly" constitutes fraud.

**ANSWER:** Denied.

89. Unlike the federal trademark registration process, Florida does not have an intent-to-use application process, and thus the only way that an entity may file for a Florida trademark is if it has actually used the trademark in commerce.

**ANSWER:** The allegations in Paragraph 89 consist of legal argument to which no response is required. To the extent a response is required, those allegations are denied.

90. The fact that the Defendant filed its application alleging a date of first use prior to its actual use demonstrates fraud and thus the registration is void *ab initio*. In the trademark registration context, this constitutes fraud.

**ANSWER:** Denied.

91. The fact that the Defendant filed its application despite knowledge of the fact that there was a pre-existing user of the mark in this state who had not yet abandoned the mark, is fraud, and thus the registration is additionally void *ab initio*. In the trademark registration context, this constitutes fraud.

**ANSWER:** Denied.



92. The Defendant has mis-used this registration in order to attempt to force the Plaintiff to sell its brand name for a paltry sum.

**ANSWER:** Denied.

93. The Plaintiff has, under threat of imminent lawsuit, been forced to seek this declaratory action as a result of the Defendant's bad acts, particularly because of the fraudulent registration.

**ANSWER:** Denied.

94. Give the above, cancellation of Florida State Trademark Reg. No. T07000000301 is proper pursuant to Fla. Stat. § 495.103(3)(d)(2007).

**ANSWER:** Denied.

95. The Plaintiff has been damaged by being forced to expend attorneys' fees in bringing this action, due to the Defendant's fraudulent registration, and these fees are recoverable from the Plaintiff pursuant to Fla. Stat. § 495.121 (2007).

**ANSWER:** Denied.

96. WHEREFORE, Plaintiff requests that this Court enter judgment declaring Florida state trademark registration number T07000000301 invalid for fraud, and awarding court costs and attorneys fees incurred in prosecuting this action and grant such supplemental relief pursuant to §86.061, *Fla. Stat.* (2007) as well as any other relief that is equitable and just under the circumstances.

**ANSWER:** Denied.

**COUNT II – CANCELLATION – PRIOR OWNERSHIP**  
**Fla. Stat. § 495.101(3)(b)(2007)**

97. Plaintiff hereby re-alleges and restates paragraphs 1 – 81 as if they were fully set forth herein in their entirety.

**ANSWER:** Defendant adopts its responses to paragraphs 1 through 81.

98. Florida State Trademark Reg. No. T07000000301 was issued for a Mark that is properly owned, through prior use, by the Plaintiff as discussed *supra*.

**ANSWER:** Denied.

99. Plaintiff is therefore entitled to cancellation, pursuant to *Fla. Stat.* § 495.101, of Florida State Trademark Reg. No. T07000000301.

**ANSWER:** Denied.

100. WHEREFORE, Plaintiffs request that this Court enter judgment canceling Florida State Trademark Reg. No. T07000000301, and further awarding court costs incurred in prosecuting this action and grant such supplemental relief pursuant to §86.061, *Fla. Stat.* (2007) as is equitable and just under the circumstances.

**ANSWER:** Denied.

**COUNT III – CANCELLATION – IMPROPER ISSUANCE DUE TO CONFUSION**  
**Fla. Stat. § 495.101(3)(c) (2007) and Fla. Stat. § 495.021(1)(f) (2007)**

101. Plaintiff hereby re-alleges and restates paragraphs 1 – 81 as if they were fully set forth herein in their entirety.

**ANSWER:** Defendant adopts its responses to paragraphs 1 through 81.

102. Florida State Trademark Reg. No. T07000000301 was improperly issued.

**ANSWER:** Denied.

103. Florida State Trademark Reg. No. T07000000301 was issued for a mark that was previously used in this state by the Plaintiff and was not abandoned, which is prohibited by Fla. Stat. §495.021(1)(f).

**ANSWER:** Denied.

104. The issuance of Florida State Trademark Reg. No. T07000000301 was likely to cause consumer confusion between the source or origin of the Plaintiff's services and the Defendant's services.

**ANSWER:** Denied.

105. WHEREFORE, Plaintiffs request that this Court enter judgment declaring that pursuant to *Fla. Stat.* §495.101(c), Florida State Trademark Reg. No. T07000000301 should be cancelled from the register of trademarks, awarding court costs incurred in prosecuting this action, and granting such supplemental relief pursuant to §86.061 *Fla. Stat.* (2007) as is equitable and just under the circumstances.

**ANSWER:** Denied.

**COUNT IV – CANCELLATION – IMPROPER ISSUANCE – DESCRIPTIVENESS**  
**Fla. Stat. § 495.101(3)(c) (2007) and Fla. Stat. § 495.012(1)(e)(1) (2007)**

106. Plaintiff hereby re-alleges and restates paragraphs 1 – 81 as if they were fully set forth herein in their entirety.

**ANSWER:** Defendant adopts its responses to paragraphs 1 through 81.

107. Florida State Trademark Reg. No. T07000000301 was improperly issued.

**ANSWER:** Denied.

108. Florida State Trademark Reg. No. T07000000301 was issued for a mark that is merely descriptive, which is prohibited by *Fla. Stat.* § 495.021(1)(e)(1) (2007).

**ANSWER:** Denied.

109. The Defendant's use of "FLORIDA WEEKLY," even if it otherwise constitutes valid use, has not established secondary meaning.

**ANSWER:** Denied.

110. WHEREFORE, Plaintiffs request that this Court enter judgment declaring that pursuant to *Fla. Stat.* § 495.101(c), Florida State Trademark Reg. No. T07000000301 should be cancelled from the register of trademarks, awarding court costs incurred in prosecuting this action, and granting such supplemental relief pursuant to § 86.061, *Fla. Stat.* (2007) as is equitable and just under the circumstances.

**ANSWER:** Denied.

**COUNT V - CANCELLATION - IMPROPER ISSUANCE -  
GEOGRAPHIC DESCRIPTIVE NESS  
Fla. Stat,§ 495.101(3)(c) (2007) and Fla. Stat. § 495.021(1)(e)(2) (2007)**

111. Plaintiff hereby re-alleges and restates paragraphs 1 – 81 as if they were fully set forth herein in their entirety.

**ANSWER:** Defendant adopts its responses to paragraphs 1 through 81.

112. Florida State Trademark Reg. No. T07000000301 was improperly issued.

**ANSWER:** Denied.

113. Florida State Trademark Reg. No. T07000000301 was issued for a mark that is primarily geographically descriptive, which is prohibited by *Fla. Stat. § 495.021(1)(e)(2) (2007)*

**ANSWER:** Denied.

114. WHEREFORE;, Plaintiff request that this Court enter judgment declaring that pursuant to *Fla. Stat. § 495.101(c)*, Florida State Trademark Reg. No. T07000000301 should be cancelled from the register of trademarks, awarding court costs incurred in prosecuting this action, and granting such supplemental relief pursuant to §86.061, *Fla. Stat. (2007)* as is equitable and just under the circumstances.

**ANSWER:** Denied.

**COUNT VI - DECLARATION OF NON-INFRINGEMENT  
AND PRIORITY OF RIGHT**

115. Plaintiff hereby re-alleges and restates paragraphs 1 – 81 as if they were fully set forth herein in their entirety.

**ANSWER:** Defendant adopts its responses to paragraphs 1 through 81.

116. The Defendant has claimed, through counsel, that the Plaintiff's use of FLORIDA WEEKLY is an infringement of the Defendant's rights under state and federal law.

**ANSWER:** Defendant admits that any use by Plaintiff of FLORIDA WEEKLY is an infringement of Defendant's rights under state and federal law.

117. The Plaintiff used the Trademark FLORIDA WEEKLY more than two and a half (2 1/2) years before the Defendant even existed. The Plaintiff's use of Florida Weekly is superior in time to that of the Defendant.

**ANSWER:** Denied.

118. An actual, bona fide dispute exists between the parties regarding the validity and scope of the trademark rights at issue.

**ANSWER:** Denied, except it is admitted that a dispute exists between the parties.

119. WHEREFORE, the Plaintiff requests that this Court enter a declaratory judgment that the Plaintiffs use of FLORIDA WEEKLY and the Florida Weekly domains infringes upon no state, federal, nor common law trademark rights held by the Defendants, and that SEMORAN's use of the mark FLORIDA WEEKLY is superior in time and therefore, if there is any infringement, it is the Defendant that is the infringing party, and not the Plaintiff.

**ANSWER:** Denied.

#### **COUNT VII - INJUNCTIVE RELIEF**

120. Plaintiff hereby re-alleges and restates paragraphs 1 – 81 as if they were fully set forth in their entirety herein.

**ANSWER:** Defendant adopts its responses to paragraphs 1 through 81.

121. The Defendant has engaged in practices calculated to hijack the Plaintiffs domain names and to unfairly drive the Plaintiff out of business.

**ANSWER:** Denied.

122. The Defendant should compete with the Plaintiff on a level and lawful playing field.

**ANSWER:** Paragraph 122 states a conclusion and is not a proper allegation of fact that is to be agreed or denied and thus no response is required.

123. WHEREFORE, Plaintiff requests that this court grant injunctive relief consisting of an order enjoining the Defendant from any further actions or harassment, reverse domain name hijacking, or any other means of unfair competition calculated to drive the Plaintiff out of business in any manner except through the normal course of competition on a level playing field.

**ANSWER:** Denied.

### **AFFIRMATIVE DEFENSES**

#### **FIRST DEFENSE**

The Amended Complaint, and each alleged cause of action therein, fails to set forth facts sufficient to state a claim upon which relief may be granted against Florida Media and further fails to entitle Semoran to the relief sought, or to any other relief whatsoever against Florida Media.

#### **SECOND DEFENSE**

Semoran's claims are barred because Florida Media obtained a valid trademark registration with the State of Florida Division of Corporations for the mark FLORIDA WEEKLY.

#### **THIRD DEFENSE**

Florida Media applied for the registration of the mark FLORIDA WEEKLY with the State of Florida Division of Corporations in good faith.

#### **FOURTH DEFENSE**

Use of the mark FLORIDA WEEKLY as to which Semoran seeks a declaratory

judgment constitutes unfair competition in violation of Florida Media's common law and state trademark rights.

FIFTH DEFENSE

Use of the mark FLORIDA WEEKLY as to which Semoran seeks a declaratory judgment constitutes infringement upon Florida Media's common law and state trademark rights.

SIXTH DEFENSE

Semoran's claims are barred, in whole or in part, by Semoran's unclean hands.

SEVENTH DEFENSE

Semoran's claims are barred, in whole or in part, because Semoran has no valid trademark rights in the mark FLORIDA WEEKLY.

EIGHTH DEFENSE

Semoran's claims are barred in whole or in part, because Florida Media is the superior trademark user of the mark FLORIDA WEEKLY.

COUNTERCLAIM

Defendant/Counterclaim Plaintiff Florida Media Group, LLC ("Florida Media"), counterclaims for false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), Florida trademark infringement, and violations of Florida's Unfair and Deceptive Trade Practices Act and states as follows:

PARTIES

1. Florida Media is a Limited Liability Company organized under the laws of the State of Florida with a principal place of business in Fort Myers, Florida. Florida Media is

in the business of publishing and selling a regional news and entertainment publication targeting readers who prefer active living and reside in the Greater Fort Myers area.

2. Semoran, LLC (“Semoran”) is a Limited Liability Company organized and existing under the laws of the State of Florida with a principal place of business in Altamonte Springs, Florida.

### **JURISDICTION AND VENUE**

3. This Court has subject-matter jurisdiction under the provisions of 15 U.S.C. § 1121; 28 U.S.C. §§ 1331 and 1338(a);

4. This Court has pendant jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1367.

5. Venue is appropriate in this District pursuant to 28 U.S. §§ 1391 (b) and (c).

### **NATURE OF ACTION**

6. This is an action for trademark infringement and unfair competition under the Trademark Act of 1946, as amended (the Lanham Act, 15 U.S.C. §§1051 et seq.) and related causes of action under the laws of the State of Florida, arising from the use by Semoran of the mark FLORIDA WEEKLY, in violation of Florida Media's rights in the mark FLORIDA WEEKLY.

### **BACKGROUND**

7. Since February 2007, Florida Media has been in the business of publishing a regional news and entertainment publication and interactive on-line publication, targeting readers who prefer active living and reside in the Greater Fort Myers area.



8. Beginning on January 26, 2007, Pason Gaddis, an individual, registered the following domain names:

FLAWEEKLY.COM  
FLORIDA-WEEKLY.BIZ  
FLORIDA-WEEKLY.COM  
FLORIDA-WEEKLY.INFO  
FLORIDA-WEEKLY.NET  
FLORIDANEWSWEEKLY.COM  
FLORIDAWEEKLIES.COM  
FLORIDAWEEKLY.TV  
MYFLORIDAWEEKLY.COM  
THEFLORIDAWEEKLY.COM

9. Subsequently, Pason Gaddis assigned the domain names, listed in paragraph 8 to Florida Media.

10. In February 2007, Florida Media developed a prototype of its publication under the mark FLORIDA WEEKLY and publicly submitted the publication to potential advertisers in effort to generate revenue for the FLORIDA WEEKLY publication.

11. Florida Media's prototype consisted of a 60-page, full color mock up of the publication. The prototype was used publicly, by Florida Media, to solicit advertisements.

12. On February 21, 2007, Florida Media filed a Florida trademark application for the mark FLORIDA WEEKLY with the Florida Department of State Division of Corporations. *See* Exhibit 1.

13. Florida Media's Florida trademark application states a first use date of February 1, 2007, and Florida Media supplied specimens of trademark use illustrating Florida Media's use in commerce of the mark FLORIDA WEEKLY. *See* Exhibit 1.

14. On February 21, 2007, the Florida Department of State Division of Corporation issued Florida Media a Florida State Trademark, Reg. No. T07000000301. *See* Exhibit 1.

15. In addition, on February 21, 2007, Florida Media's website, operating on the URL [www.florida-weekly.com](http://www.florida-weekly.com) under the domain name FLORIDA-WEEKLY.COM, went active on the World Wide Web. The active website provided a flash presentation announcing the launch of the FLORIDA WEEKLY publication and posted Florida Media's media kit available for download.

16. The first circulated edition of Florida Media's printed publication was distributed to the public on April 5, 2007.

17. Florida Media's printed publication consisted of 64 color pages with three informational sections including news, real estate and arts & entertainment.

18. On April 5, 2007, Florida Media's website operating on the URL [www.florida-weekly.com](http://www.florida-weekly.com) under the domain name FLORIDA-WEEKLY.COM, contained the complete print version of FLORIDA WEEKLY.

19. Since April 5, 2007, Florida Media has been publishing a print version of FLORIDA WEEKLY and operating an Internet based, on-line publication with a URL address of [www.florida-weekly.com](http://www.florida-weekly.com) under the domain name FLORIDA-WEEKLY.COM.

20. Florida Media's circulation base consists of approximately 15,000 newspapers with bulk delivery to nearly 500 locations in the greater Fort Myers area, Cape Coral, Bonita Springs and Sanibel Island. Approximately 1,200 copies are mailed to subscribers in Florida and the United States.

21. On July 25, 2007, Florida Media filed a “use based” trademark application with the United States Patent and Trademark Office pursuant to 15 U.S. C. § 1051(a) for use in connection with printed and online newspapers. *See* Exhibit 2.

22. Since February 1, 2007, Florida Media has expended substantial time, effort and financial resources in connection with the advertising, marketing and promotion of its publication under the FLORIDA WEEKLY mark.

23. As a result of Florida Media’s hard work and dedication, Florida Media established common law trademark rights in the mark FLORIDA WEEKLY.

24. The public in general has come to recognize that the mark FLORIDA WEEKLY identifies Florida Media and designates services originating from Florida Media.

**Semoran’s Conduct**

25. On or around July 16, 2007, Semoran launched a website operating under the domain name FLORIDAWEEKLY.COM with a URL address of [www.floridaweekly.com](http://www.floridaweekly.com).

26. Semoran’s infringing website operating under the domain FLORIDAWEEKLY.COM merely provides headlines from third party news sources around the country and provides links to third party publications.

27. Semoran’s infringing website purports to offer information related to News, Real Estate, Classifieds and Personals. However, to date, the only functional hyperlink on the website goes directly to headlines of third party publications and offer links to the third party publications.

28. Semoran does not provide any original content on its infringing website.

29. The only content on Semoran's infringing website is headlines to third party publications and a blog regarding the instant lawsuit.

30. Prior to July 16, 2007, Semoran owned the domain name FLORIDAWEEKLY.COM. However, the domain name was parked, listed for sale and did not have any content on the website.

31. On July 16, 2007, Florida Media sent Semoran a cease and desist letter indicating that the recent launch of a news related website, operating under the domain name FLORIDA WEEKLY.COM and boldly displaying the mark FLORIDA WEEKLY on its website is an infringement of Florida Media's Florida State trademark rights and common law rights established by Florida Media. *See Exhibit 3.*

32. On August 1, 2007, in reaction to the cease and desist letter from Florida Media, Semoran filed a declaratory action in the Circuit Court for the Eighteenth Judicial Circuit for Seminole County, Florida.

33. On August 20, 2007, Semoran filed a "used based" trademark application for the mark FLORIDA WEEKLY with the United States Patent and trademark Office pursuant to 15 U.S.C. § 1051(a), for use in connection with an on-line periodical publication dealing with news, information, and events featuring subjects of interest to residents of Florida and visitors to Florida.

34. On August 28, 2007, Florida Media removed the case to this Court.

35. Semoran began using the mark FLORIDA WEEKLY, without Florida Media's permission, with full knowledge of Florida Media's ownership of the mark

FLORIDA WEEKLY, and with the intention of trading upon the goodwill established by Florida Media therein.

36. Semoran continues to use the mark FLORIDA WEEKLY, without Florida Media's permission, and with full knowledge of Florida Media's ownership of the mark FLORIDA WEEKLY.

37. As recently as July 7, 2007, Semoran continues to register domain names that include Florida Media's mark FLORIDA WEEKLY after Semoran has been placed on notice of its infringing behavior.

38. For example, Semoran has registered the domain names FLORIDAWEEKLYMAGAZINE.COM, WEEKLYFLORIDA.COM, CENTRALFLORIDAWEEKLY.COM, SOUTHFLORIDAWEEKLY.COM in an attempt to trade off of the goodwill of Florida Media.

39. Upon information and belief, and as evidenced by materials published by Semoran, Semoran is using the mark FLORIDA WEEKLY to promote confusion with Florida Media's mark FLORIDA WEEKLY, all inuring to Semoran's unearned benefit and to the detriment of Florida Media.

40. Semoran's use of the mark FLORIDA WEEKLY is likely to cause confusion, mistake or deception as to the source or origin of Semoran's services, in that the public is likely to believe that Semoran's services are provided by, sponsored by, approved by, licensed by, affiliated with, or in some way legitimately connected with Florida Media, or indeed are Florida Media's services, all to Florida Media's irreparable harm, and this use infringes upon the intellectual property rights of Florida Media.

41. Semoran's infringing and violative conduct was undertaken intentionally, willfully and with wanton disregard of Florida Media's rights.

**COUNT I**

**False Designation of Origin Under § 43 (a) of the Lanham Act**

42. Florida Media repeats and realleges the allegations set forth in Paragraphs 1 through 41.

43. This Count arises under §43(a) of the Lanham Act (15 U.S.C. § 1125(a)).

44. The mark FLORIDA WEEKLY has become uniquely associated with and identifies Florida Media's products and services.

45. Florida Media owns common law trademark rights to the mark FLORIDA WEEKLY.

46. By the acts complained of herein, Semoran intentionally engaged in conduct that constitutes false designation of origin in violation of 15 U.S.C. § 1125(a).

47. The Semoran's false designation of origin, false or misleading descriptions of fact, or false or misleading representations of fact are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Semoran with Florida Media, or as to the origin, sponsorship, or approval of the goods, services, or commercial activities of Semoran by Florida Media.

48. Semoran's infringing and violative conduct has caused irreparable and immediate injury to Florida Media.

49. Florida Media has suffered damages as a result of the Semoran's violation of 15 U.S.C. § 1125(a).

**COUNT II**

**Trademark Infringement under Florida Law**

50. Florida Media repeats and realleges the allegations set forth in Paragraphs 1 through 41.

51. Florida Media is the owner of Florida State Trademark Registration No. T07000000301.

52. This count arises under Section 495.141 of the Florida Statutes.

53. By using the mark FLORIDA WEEKLY for a news publication, Semoran is marketing services similar to Florida Media's services under a confusingly similar mark without Florida Media's approval.

54. Semoran is on actual and constructive notice of the existence of Florida Media's rights in the mark FLORIDA WEEKLY by reason of the existence Florida Media's Florida trademark registration.

55. Semoran is using the mark FLORIDA WEEKLY in connection with the sale, offering for sale, distribution or advertising of services in a manner likely to cause confusion or mistake, or to deceive as to the source or origin of such services.

56. Semoran's conduct has created and will create confusion among the members of the relevant consuming public and will cause irreparable and immediate injury to Florida Media for which Florida Media has no adequate remedy at law.

57. Florida Media Group has been damaged by Semoran's infringement of its Florida registered mark.

**COUNT III**

**Deceptive and Unfair Trade Practices**

58. Florida Media repeats and realleges the allegations set forth in Paragraphs 1 through 41.

59. This Count arises under § 501.204, Florida Statutes (Consumer Protection; Deceptive and Unfair Trade Practices) of Title XXXIII, Regulation of Trade, Commerce, Investments, and Solicitations.

60. Semoran's use of the mark FLORIDA WEEKLY constitutes an unlawful appropriation of Florida Media's exclusive rights in the mark FLORIDA WEEKLY, and such unauthorized use has caused and will continue to cause damage and irreparable injury to Florida Media.

61. Semoran has engaged in deceptive acts and/or fraudulent conduct contrary to honest practices in industrial and commercial matters. Semoran's conduct was immoral, unethical, oppressive, or unscrupulous, and/or substantially injurious to Florida Media.

62. By its actions, Semoran has damaged Florida Media and been unjustly enriched.

**PRAYER AS TO ALL COUNTS**

WHEREFORE, Florida Media demands:

a. That Semoran, its agents, servants, officers, servants, employees and affiliates, and all those persons in active concert or participation with them, be permanently enjoined and restrained from:

(1). Using the mark FLORIDA WEEKLY, or any other mark



confusingly similar to Florida Media's mark FLORIDA WEEKLY alone or in combination with other words, as a service mark, trademark, trade name, domain name component or otherwise, to market, promote advertise or identify the Semoran's news publications or any other goods or services;

(2). Otherwise infringing the mark FLORIDA WEEKLY;

(3). Using the domain names FLORIDAWEEKLY.COM, FLORIDAWEEKLY.ORG, FLORIDAWEEKLY.INFO, FLORIDAWEEKLY.BIZ, FLORIDAWEEKLY.US, FLORIDAWEEKLY.COM, FLORIDAWEEKLYMAGAZINE.COM, WEEKLYFLORIDA.COM, CENTRALFLORIDAWEEKLY.COM, SOUTHFLORIDAWEEKLY.COM or any other domain names registered to Semoran or any of its principals or agents that includes the mark FLORIDA WEEKLY;

(4). Registering any future domain names containing the mark FLORIDA WEEKLY.

(5). Holding itself out as the owner of, or a company authorized to use, as part of its name, FLORIDA WEEKLY, or a name confusingly similar thereto as a trademark, service mark, or trade name;

(6). Performing any actions or using any words, names, styles, titles, or marks, which are likely to cause confusion, to cause mistake or to deceive; or to otherwise mislead the trade or public into believing that Florida Media and Semoran are one and the same or are in some way connected; or that Florida Media is a sponsor of Semoran; or that Semoran is in some manner affiliated or associated with or under supervision or control of Florida Media; or that news publications or other goods or services of Semoran originate

with Florida Media or are conducted or offered with the approval, consent or authorization, or under the supervision of Florida Media; or are likely to in any way lead to the trade or the public to associate Semoran with Florida Media.

(7). Using any words, names, styles, titles or marks which create a likelihood of misappropriation or the goodwill associated therewith; and

(8). Using any trade practices whatsoever, including those complained of herein, which tend to unfairly compete with or injure Florida Media's businesses and the goodwill attached thereto.

b. For an order holding that Semoran's actions constitutes a false designation of origin in violation federal law.

c. That Semoran be required to recall and deliver up and destroy, at its expense, all newspapers, stationery, business forms, signs, advertisements, brochures, promotional materials and other written materials which bear the infringing name or any name or mark confusingly similar to Florida Media's mark FLORIDA WEEKLY, together with all plates, molds, matrices and other means and materials for making or reproducing same.

d. Pursuant to 15 U.S.C. § 1117, Florida Media be awarded its damages, Semoran's profits, Florida Media's attorneys' fees and costs, and that this award of damages and profits be tripled pursuant to 15 U.S.C. § 1117 and enhanced pursuant to Section 495.141, Florida Statutes.

e. Pursuant to Section 495.141 Florida Statutes, Florida Media be awarded its damages, Semoran's profits, Florida Media's attorneys' fees and costs, and that this award of

damages and profits be tripled pursuant to Section 495.141, Florida Statutes and enhanced pursuant to Section 495.141, Florida Statutes.

f. That Florida Media has such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that this 31<sup>st</sup> day of October, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send a Notice of Electronic filing to: Lawrence G. Walters, Esq. and Marc J. Randazza, Esq., Weston, Garrou, Dewitt & Walters, 781 Douglas Avenue, Altamonte Springs, Florida, 32714..

s/ Judith M. Mercier  
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