

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL MEDIA FILMS, INC.,

Plaintiff,

v.

LUCAS ENTERTAINMENT, INC.,
a New York corporation;

LUCAS DISTRIBUTION, INC.
a New York corporation, and;

ANDREI TREIVAS BREGMAN p/k/a
MICHAEL LUCAS
an individual,

Defendants.

07 CV 1178 (JGK)

**MEMORANDUM IN SUPPORT OF INTERNATIONAL MEDIA FILMS'
MOTION FOR PRELIMINARY INJUNCTION**

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I. INTRODUCTION

This case presents a paradigm of willful trademark and copyright infringement. Defendants Michael Lucas (“Michael Lucas”), Lucas Entertainment, Inc. (“Lucas Entertainment”), and Lucas Distribution, Inc. (“Lucas Distribution”) (hereinafter, collectively referred to as “Defendants”) are in the business of creating, displaying, exploiting, and distributing explicit, “hardcore” pornographic films. Defendants’ latest release is an updated, pornographic “remake” of LA DOLCE VITA, one of the most renowned, distinguished films of the Twentieth Century. Defendants’ remake is sold on two individual digital video discs (“DVDs”) as a “Part 1” and “Part 2”, because according to the Lucas Entertainment website, “there’s so much great f*cking that [they] can’t fit it in one disc...”. [Declaration of Alfredo Leone (“Leone Decl.”), ¶ 24 and Ex. 19.] The set is entitled “Michael Lucas’ La Dolce Vita” and at times, is simply referred to as “La Dolce Vita”. “Part 1” and “Part 2” can be purchased separately for \$44.95 each, or the discs can be purchased collectively, sold as a “Director’s Cut” for \$99.95. [*Id.*] (Both “Part 1” and “Part 2” are collectively referred to herein as the “Lucas LA DOLCE VITA Films”).

The sale of and publicity for the Lucas LA DOLCE VITA Films have damaged, are damaging and will continue to damage irreparably the trademark LA DOLCE VITA and the value of the copyright of the original LA DOLCE VITA by tarnishing the luster of the title and degrading the copyright by condensing the plot in order to accommodate numerous, extended, graphic depictions of sexual activity.

II. FACTUAL BACKGROUND

International Media Films, Inc. (hereinafter referred to as “Plaintiff” or “IMF”) acquired rights in and to LA DOLCE VITA (hereinafter, “LA DOLCE VITA” or the “Motion Picture”) in 2001 by way of a deed of transfer, for a territory comprising the entire world excluding Italy, Belgium, Luxembourg and France (the “Territory”). [Leone Decl., ¶ 3 and Ex. 1.] Accordingly, since 2001, IMF has been the rightful owner of all intellectual property rights in and to LA DOLCE

VITA in the Territory, and considers LA DOLCE VITA a fundamental title in its treasured film library. [*Id.*] IMF holds a certificate of copyright registration for LA DOLCE VITA and has not relinquished any ownership rights in the film. [*Id.*, ¶ 4 and Ex. 2.]

A. Fellini's LA DOLCE VITA

LA DOLCE VITA was originally produced by Giuseppe Amato, Franco Magli and Angelo Rizzoli, and written and directed by renowned film director Federico Fellini. [*Id.*, ¶ 5 and Ex. 3.] LA DOLCE VITA follows seven days in the life of tabloid journalist Marcello Rubini (portrayed by Marcello Mastroianni), who writes about the glitzy show business life of Rome, while yearning to write more serious articles. [*Id.*, ¶ 6.] In constant search for the next big scandal or celebrity story, Marcello, usually accompanied by his sidekick photographer Signore Paparazzo, is continually seduced by the decadent life led by Rome's pampered rich. [*Id.*] Marcello attaches himself to a series of beautiful women throughout the Motion Picture, while his unsociable girlfriend is incessantly depressed and jealous as she wonders about Marcello's whereabouts. [*Id.*] Much of the fascination with the motion picture, originally and today, is Federico Fellini's obsession with Rome's elite upper class, which is vividly portrayed throughout LA DOLCE VITA. [*Id.*] The Motion Picture is believed to be the genesis of the term "paparazzi" (derived from the name of Marcelo's photographer friend Paparazzo in the Motion Picture), which today is defined as "a freelance photographer who aggressively pursues celebrities for the purpose of taking candid photographs." [*Id.*, and Ex. 4.] Paparazzi run rampant throughout both LA DOLCE VITA and the Lucas LA DOLCE VITA Films.

B. The Fame of LA DOLCE VITA

LA DOLCE VITA was released in Italy in 1960, and was a "tremendous hit abroad" according to The New York Times on April 20, 1961, in an article which covered the premier of the Motion Picture in New York City the evening before. [*Id.*, ¶ 7., and Ex. 5.] The New York Times stated that LA DOLCE VITA "proved to deserve all the hurrahs and the impressive honors it has received." [*Id.*, and Ex. 5.] LA DOLCE VITA received so much critical acclaim that it is now

deemed to be “one of the most widely seen and acclaimed European movies of the 1960s” and “[a] huge worldwide success” by The New York Times. [*Id.*, ¶ 8 and Ex. 6.] LA DOLCE VITA was also hailed by famed film critic Roger Ebert as “one of the finest motion pictures of our time.” [*Id.*, ¶ 9 and Ex. 7.]

LA DOLCE VITA was nominated for four Academy Awards. [*Id.*, ¶10 and Ex. 8.] It won the 1961 Academy Award for ‘Best Black and White Costume Design’, and was nominated that same year for Academy Awards in the ‘Best Black and White Art Direction’, ‘Best Original Screenplay’ (‘Writing (Story and Screenplay Written Directly for the Screen)’), and ‘Best Directing’ categories. [*Id.*, ¶ 10 and Ex. 8.] Other awards and accolades for LA DOLCE VITA include the 1960 Cannes Film Festival Palme D’Or (Golden Palm) Award, the New York Film Critics Circle Award for ‘Best Foreign Film’ of 1961, recognition as the “Best British Film” at the 1960 British Academy Awards, and a nomination as the ‘Top Foreign Film’ at the 1961 National Board of Review. [*Id.*, ¶11 and Ex. 9, 10, 11 and 12.]

C. IMF Acquires All Copyright and Trademark Rights in and to LA DOLCE VITA in 2001

On September 20, 2001, IMF acquired all right, title, and interest to LA DOLCE VITA. [*Id.*, ¶ 3., Ex. 1.] In 2003, IMF entered into a distribution agreement with film distribution company Koch Lorber Films, LLC (“Koch Lorber”) pursuant to which IMF granted to Koch Lorber the “sole and exclusive right and license to... reproduce, distribute, license and sub-license, vend, rent, sell, advertise, publicize, promote and manufacture...” LA DOLCE VITA throughout North America, for a period of seven (7) years, in exchange for an advance payment of One Hundred Thousand Dollars (\$100,000). [*Id.*] Both IMF and Koch Lorber have successfully exploited LA DOLCE VITA in a number of ways, so that it has maintained its high-quality reputation as a sophisticated, classic, world-renowned film. [*Id.*]

D. IMF’s Ownership and Exploitation of the Trademark and Copyright in and to LA DOLCE VITA

IMF and Koch Lorber prominently display the LA DOLCE VITA title and trademark, as well as the IMF trade name, in commerce in connection with the advertising, sale, marketing, and exploitation of the Motion Picture throughout North America. [*Id.*, ¶13.] Films bearing Plaintiff's LA DOLCE VITA mark are distributed through interstate commerce and are available for consumers to view on cable television, or to purchase and/or rent both in traditional retail outlets and online at such mainstream consumer websites such as amazon.com and blockbuster.com. [*Id.*, ¶ 14 and Ex. 13 and 14.]

IMF, through Koch Lorber, has sold approximately Seventy Five Thousand (75,000) units of the LA DOLCE VITA film, in DVD format, in the last two and half years alone, resulting in revenues to IMF in excess of One Hundred and Fifty Thousand Dollars (\$150,000.00). [*Id.*, ¶ 15.]

Since 2004, Koch Lorber has spent well over One Hundred Thousand Dollars (\$100,000) promoting LA DOLCE VITA through consumer marketing, publicity and advertising initiatives. [*Id.*, ¶16.] Currently Koch Lorber sells two different DVD configurations through retail; a two disc set, and a three disc special edition, which KOCH Lorber has positioned as a collector's gift set, and which includes a poster, photocards, and an 'exclusive' booklet. [*Id.*, ¶ 16.] In 2006, Koch Lorber positioned LA DOLCE VITA as a top holiday gift guide recommendation. [*Id.*]

In addition to the exploitation of the Motion Picture by Koch Lorber, Plaintiff maintains a successful and lucrative licensing program with regard to LA DOLCE VITA through which it has licensed particular uses of the Motion Picture to third party film companies, major advertising agencies, television networks, and museums, resulting in license fees received by Plaintiff in excess of One Hundred and Fifty Thousand Dollars (\$150,000) since 2003. [*Id.*, ¶ ¶ 17 & 18.] For example, in 2003, IMF licensed 90 seconds of footage from the Motion Picture to Third Millennium Films, Inc. to be included in the film, "Lost In Translation". [*Id.* ¶ 19.] In 2006, IMF licensed a 30 second clip from the Motion Picture to advertising agency Young & Rubicam, Inc. to be used in a broadcast commercial for Prego® brand tomato sauce; and also in 2006, IMF licensed certain usages of the

Motion Picture to rights clearance company Corbis Corporation, for use by Peroni Nastro Azzurro (“Peroni”) to advertise and promote Peroni beer in its recent advertising campaign. [*Id.*, and Ex. 15.] Pursuant to the terms of such license, Peroni was granted the right to create scenes inspired and/or derived from the Motion Picture to be used as advertisements. [*Id.*] Upon information and belief, Peroni’s advertising campaign is a Fifty Million Dollar (\$50,000,000) global campaign which was launched in the United Kingdom, and portrayed in the United States as well as in other countries around the world. [*Id.*] In an article published by Brandweek, a representative of Peroni explained that the Motion Picture was sought after because it is a film that “represents Italian style and sophistication.” [*Id.* and Ex. 16.]

IMF has also licensed certain usages of LA DOLCE VITA to the Ministry of Culture of Spain, which requested a license to portray certain scenes of the Motion Picture in a video dedicated to the history of clothing in Madrid. [*Id.*, ¶ 20.] In 2003, IMF licensed television performance rights for LA DOLCE VITA to Turner Entertainment Networks, Inc. for use on TBS and Turner Classic Movies cable television channels for a period of three (3) years. [*Id.*, ¶ 21.]

E. IMF’s Response Upon Learning of Defendants’ Intent to Use IMF’s LA DOLCE VITA Mark for Defendants’ Hardcore Pornographic Adaptation of LA DOLCE VITA; IMF’s Discovery That Defendants were Replicating Scenes from IMF’s LA DOLCE VITA, and IMF’s Demand That Defendants Cease and Desist From Infringing IMF’s Intellectual Property Rights.

IMF learned from an article published in the New York Post that Michael Lucas was filming scenes in New York City for Lucas Entertainment, which was producing “an adult-version remake of ‘La Dolce Vita.’” [*Id.*, ¶ 22 and Ex. 17.] IMF later learned that Michael Lucas had “just wrapped up his newest film, La Dolce Vita, a glossy remake of Fellini’s classic...” from a three page article published in New York Magazine on October 30, 2006. [*Id.*, ¶ 23 and Ex. 18.] In this article, Michael Lucas is quoted as stating he believes his version of LA DOLCE VITA is “better than the original.” [*Id.*] It was obvious from the article that the Lucas LA DOLCE VITA Film would be an ‘explicit’ pornographic film. [*Id.*]

Prior to the commencement of sales of the Lucas LA DOLCE VITA Films, Lucas exhibited a “softcore version” of the Lucas LA DOLCE VITA Films at a premier party in New York City. [*Id.*, ¶25.] On December 2, 2006, website xbiz.com published an article about Michael Lucas’ “premier party for his latest feature film, ‘La Dolce Vita’” [at which a] “softcore version of the film will be screened . . . , with a hardcore version available in stores... ‘La Dolce Vita’ features Lucas, Vivid star Savanna Samson and Broadway performer Spencer Quest.” [*Id.* and Ex. 21.] A review of the Lucas Entertainment website on December 14, 2006 revealed that Michael Lucas had just released for sale “Michael Lucas’ La Dolce Vita, Part 1 & 2”. [*Id.*, ¶ 24 and Exs. 19 and 20.]

Michael Lucas himself admits that the Lucas LA DOLCE VITA Films are “[b]ased on...” and “inspired by the classic tale of sex, glamour and debauchery...” on Defendants’ website and product packaging, of the Lucas LA DOLCE VITA Films, respectively. [*Id.*, ¶ 26 and Ex. 22].

IMF later learned that Michael Lucas had been posting messages on his web blog (lucasblog.com) during the filming of the Lucas LA DOLCE VITA Films to create an early ‘buzz’ prior to release. [*Id.*, ¶ 27]. In one such message posted by Michael Lucas on September 28, 2006, he wrote to his fans: “We finally shot the iconic scene of Michael Lucas’ La Dolce Vita, inspired by the Fellini film” (emphasis added). [*Id.*, and Ex. 23.]

In another message posted by Michael Lucas on his web blog, dated October 19, 2006, Michael Lucas again admits he copied LA DOLCE VITA:

Ok, that's all for today. I hope you enjoy the latest teaser. It's a teaser because we are not finished editing and have not created the official trailer yet. Look out for a steamier XXX version along with something that highlights some more upbeat moments of the film. Some people have commented on the video clip's somber mood and the fact that I am the center of attention. Well, that's the storyline, just as in the original film. My character wonders through life, lonely, while everyone around him is happy and energetic. You'll just have to see it to get the point I guess. (emphasis added.) [*Id.*, ¶ 28 and Ex. 24.]

Individuals working with Michael Lucas on the Lucas LA DOLCE VITA Films have made similar statements with regard to copying LA DOLCE VITA. [*Id.*, ¶ 29.] For example, on

December 8, 2006, GayVN magazine published an article on its website, gayvn.com, about the filming of the Lucas LA DOLCE VITA Films. [*Id.*, and Ex. 25.] In this article, Lucas' "screenwriter Tony Dimarco" is quoted as stating, "we are trying to update a classic here," Dimarco says. "I watched the original La Dolce Vita over and over, but we wanted to add elements of New York City and things that are associated with Michael Lucas to it..." [*Id.*]

IMF moved swiftly to protect its rights in the LA DOLCE VITA title, mark and film. After an investigation in December (by its attorneys) into the release and exploitation of the Lucas LA DOLCE VITA Films, IMF promptly sent a letter to Michael Lucas on December 14, 2006 in order to inform him of IMF's rights in the Motion Picture and request that he immediately cease all exploitation, sale and distribution of the Lucas La Dolce Vita Films. [*Id.*, ¶ 30 and Ex. 26.] Counsel for Defendant Michael Lucas responded by letter dated December 21, 2006, that provided no substantive response to IMF's correspondence, but stated that they would more fully respond in "early January". [*Id.*, and Ex. 27.] On January 18, 2007, Defendants' counsel responded with a detailed letter stating that the Defendants were protected by the affirmative defenses of abandonment, and fair use. [*Id.*, and Ex. 28.]

F. Despite Being Notified of IMF's Rights in the LA DOLCE VITA Title, Mark and Film, Defendants Continue to Manufacture and Exploit Defendant's LA DOLCE VITA Films.

Despite IMF's protests, Michael Lucas has continued to promote the Lucas LA DOLCE VITA Films vigorously with the media. A number of the reviews published in various publications have also recognized that the Lucas LA DOLCE VITA Films are "remakes" and/or new "versions" of LA DOLCE VITA. [*Id.*, ¶ 31.] For example, on December 17, 2006, the website ManNet.com reviewed the "La Dolce Vita: Director's Edition" and stated the following:

Lucas, with co-director and writer Tony Dimarco, is now going a step further in his quest to remake the great arthouse film cannon with a pornographized (hey, movies can be musicalized and colorized, so they can be pornographized) 'La Dolce Vita,' going right to the top of the movie chain with Federico Fellini's 1960 Italian masterpiece." [*Id.*, and Ex. 29.]

Again, the Lucas LA DOLCE VITA Films are reviewed subsequent to Plaintiff's correspondence to Defendant, when on December 29, 2006, fleshbot.com published a DVD review of the Lucas LA DOLCE VITA Films. The article compares the original LA DOLCE VITA to the Lucas LA DOLCE VITA Films, stating that "[i]t's a credit, then, to directors Michael Lucas and Tony Dimarco that their version of "La Dolce Vita" manages to capture that melancholy while adhering loosely to many of the plot details of the original" (emphasis added). [*Id.*, and Ex. 30.] More recently, the February 2007 edition of XFactor magazine published an article about the Lucas LA DOLCE VITA Films, stating:

...Lucas steps boldly into the shoes of that great Italian director updating Fellini's 1960 classic, La Dolce Vita...Tony Dimarco's screenplay remains faithful [to] the feel of the original, while changing locale from Rome to New York City and updating the action by half a century. Michael Lucas takes over the role created by Marcello Mastroianni – that of a jaded writer. (emphasis added). [*Id.*, and Ex. 31.]

G. Procedural History

Plaintiff filed the complaint in this action on February 15, 2007 (the "Complaint"), but did not immediately serve the Complaint pending anticipated discussion of possible settlement. The Complaint alleges that Defendants' actions constitute unregistered trademark infringement in violation of Sections 43(a) and tarnishment violative of Section 43(c) of the Lanham Act (and applicable New York state laws), as well as copyright infringement under Sections 106 and 501 of the Copyright Act. The parties engaged in discussions over several weeks, but failed to reach an agreement. Accordingly, IMF served via hand delivery its complaint on Monday, March 5, 2007 to Lucas Entertainment and Lucas Distribution but was unable to serve Michael Lucas as he was out of state. As a result, IMF proceeded to serve Michael Lucas on Wednesday, March 7, 2007 via certified mail at his known place of residence as well as via hand delivery at his place of business. IMF then filed this present motion for preliminary injunction on March 15, 2007.

III. ARGUMENT

To obtain a preliminary injunction, IMF must show (a) irreparable harm and (b) either (i) likelihood of success on the merits or (ii) present sufficiently serious questions going to the merits to make them a fair ground for litigation. *Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema, Ltd.*, 604 F.2d 200, 206-207 (2d Cir.1979); *see also, Warner Bros., Inc., v. Gay Toys, Inc.* 658 F.2d at 78 (2d Cir.1981); *Virgin Enterprises, Ltd. v. Nawab*, 335 F.3d 141, 145 (2d Cir.2003). The balance of hardships must tip decidedly toward the party requesting the preliminary relief. *Dallas Cowboys Cheerleaders*, 604 F.2d at 207.

Likelihood of confusion is the foundation for trademark infringement, while the related concept of substantial similarity is the basis of copyright infringement. Once the Plaintiff has shown a mark ownership and likelihood of confusion in trademark infringement cases, irreparable harm and the likelihood of success are presumed. *Novartis Animal Health US, Inc. v. Abbeyvet Export Ltd.*, 409 F.Supp.2d 264, 265 (S.D.N.Y.2005) (*citing New Kayak Pool Corp. v. R & P Pools, Inc.*, 246 F.3d 183, 185 (2d Cir.2001)). In copyright infringement cases, irreparable harm is similarly presumed once ownership and substantial similarity between a defendant's work and the protectible elements of a plaintiff's work are established. *See, Merkos L'Inyonei Chinuch, Inc. v. Otsar Sifrei Lubavitch, Inc.*, 312 F.3d 94, 96 (2d Cir.2002); *see also, Wainwright Securities, Inc. v. Wall Street Transcript Corp.*, 558 F.2d 91, 94 (2d Cir.1977), *cert. denied* 434 U.S. 1014 (1978). If substantial similarity is sufficient to create a likelihood of confusion in the marketplace, the presumption of irreparable injury follows "because the confusion created in the marketplace will damage the copyright holder in incalculable and incurable ways." *Fisher-Price, Inc. v. Well-Made Toy Mfg. Corp.*, 25 F.3d 119, 124 (2d Cir.1994).

A. Success on the Merits of IMF's Trademark Infringement Claim is a Virtual Certainty Because Defendants Use a Title For Their Film Identical to IMF's LA DOLCE VITA Mark Which Creates an Obvious Likelihood of Confusion

The very definition of a trademark is "any word [or] name . . . used by a person . . . to identify and distinguish his or her goods, including a unique product, from those manufactured and sold by others and to indicate the source of the goods, even if that source is unknown." 15 U.S.C. § 1127.

It is not surprising, that titles of books, films and television programs can also serve as source identifiers entitled to trademark protection once the title achieves secondary meaning. *See, Orion Pictures Co. v. Dell Publishing Co.*, 471 F.Supp. 392 (S.D.N.Y.1979). Secondary meaning is "[t]he power of a name or other configuration to symbolize a particular business, product, or company..." *Dallas Cowboys Cheerleaders*, 604 F.2d at 204, n. 5; quoting *Ideal Toy Corp v. Kenner Products Division of Gen'l Mills Fun Group, Inc.* 443 F. Supp. 291, 305 n. 14 (S.D.N.Y.1977).

To prevail in this trademark infringement claim, IMF Plaintiff must establish that it has rights in the title LA DOLCE VITA, that the LA DOLCE VITA has achieved secondary meaning, and that there may be confusion between the Plaintiff's and Defendants' use of the LA DOLCE VITA mark.

1. IMF Owns Valid Trademark Rights in the LA DOLCE VITA Mark.

As noted above, IMF acquired all rights related to the motion picture LA DOLCE VITA in 2001. Since 2001, the LA DOLCE VITA title has been in continuous use across the country, as the Motion Picture is available for consumers to view on cable television and is distributed through interstate commerce and available to purchase and/or rent from both traditional retail outlets and online at mainstream consumer websites. [Leone Decl., ¶ 14.] It is clear that IMF owns valid common law trademark rights in the LA DOLCE VITA title by virtue of its adoption and continuous use of the LA DOLCE VITA mark in commerce.

Section 43(a) of the Lanham Act protects unregistered marks from infringement. *Warner Bros.*, 658 F.2d at 77-78. Specifically, a federal claim under Section 43(a) of the Lanham Act for

infringement of an unregistered mark is statutorily defined to be triggered by a third party use which “is likely to cause confusion, or to cause mistake, or to deceive ...as to the origin, sponsorship, or approval of his or her goods ... by another person.” 15 U.S.C. § 1125(a)(1).

As noted above, unregistered film titles, recognized as source identifiers, are also protected from trademark infringement under § 43(a). In fact, this Court has stated that “misuse of trademarks or service marks, and deception or confusion of the kind prohibited by the statute, may occur in connection with the title of a movie, its advertising or in the content of the movie itself.” *Dallas Cowboys Cheerleaders, Inc. v. Pussycat Cinema, Ltd.*, 467 F.Supp. 366, 375 (S.D.N.Y.), *aff’d*, 604 F.2d 200 (2d Cir.1979).

Dallas Cowboys is factually similar to the case at bar in that defendant Pussycat Cinema’s product was an explicit pornographic motion picture, described by the court as “a gross and revolting sex film...” *Dallas Cowboys Cheerleaders*, 604 F.2d at 202. Defendant’s film featured members of a high-school cheerleading squad raising money by prostituting themselves in order to send one of their squad members to Dallas to tryout for the famous “Texas Cowgirls” cheerleading squad. The court explained:

Plaintiff expects to establish on trial that the public may associate it with defendants’ movie and be confused into believing that plaintiff sponsored the movie, provided some of the actors, licensed defendants to use the uniform, or was in some other way connected with the production. The trademark laws are designed not only to prevent consumer confusion but also to protect the synonymous right of a trademark owner to control his product’s reputation. The district court did not err in holding that plaintiff had established a likelihood of confusion within the meaning of the Lanham Act sufficient to entitle it to a preliminary injunction and that plaintiff had a right to preliminary relief on its claims of unfair competition and dilution (citations omitted). *Dallas Cowboys Cheerleaders*, 604 F.2d at 205.

2. IMF’s LA DOLCE VITA Mark Has Acquired Secondary Meaning.

A title, through publicity and use, that has come to be associated with a certain film, achieves secondary meaning. Facts such as the length and continuity of a mark’s use, sales, advertising, and promotion of the mark, unsolicited media coverage and sales figures of the work the title identifies

help determine whether the title has achieved secondary meaning. *See, Orion Pictures Co.*, 471 F. Supp. 392 (Film title “A Little Romance” was found to have acquired secondary meaning based on extensive publicity and use. *Id.* at 395-396.); *see also, Brandon v Regents of University of California*, 441 F. Supp. 1086 (D. Mass.1977) (Film title “Anything They Want To Be” had acquired secondary meaning having received widespread critical acclaim coupled with advertising and promotion.” *Id.* at 1088.); *Morgan Creek Productions, Inc. v. Capital Cities./ABC, Inc.* 22 U.S.P.Q.2d 1881 (C.D.Cal.1991) (Film title “Young Guns” found to have acquired secondary meaning. *Id.* at 1887.).

As noted previously, LA DOLCE VITA has received so much critical praise that it is now deemed to be “one of the most widely seen and acclaimed European movies of the 1960s” [Leone Decl. ¶ 8; Ex. 6]. Further, more than forty five years after the film’s initial release, sales of LA DOLCE VITA continue to be impressive, reaching approximately Seventy Five Thousand units in the United States and Canada, in the last two and half years alone. [*Id.*, ¶ 15.]

In addition, the deliberate copying of the LA DOLCE VITA mark is further persuasive evidence that the LA DOLCE VITA mark has achieved secondary meaning. *See, Harlequin Enterprises Ltd. v. Gulf & Western Corp.*, 644 F.2d 946, 950 (2d Cir.1981) (intentional copying found to be the most persuasive evidence of secondary meaning); *Hermes Intern. v. Lederer de Paris Fifth Ave., Inc.*, 219 F.3d 104 (2d Cir.2000) (“The best evidence that Hermès' products indicate their source may, in fact, be defendants' own direct copying.” *Id.* at 110.); *T. Anthony Ltd. v. Louis Vuitton Malletier*, 30 U.S.P.Q.2d 1214, 1217 (S.D.N.Y.1993) (concluding that evidence that mark is copied widely actually acts as persuasive evidence that the mark has become distinctive as a source-identifier).

Out of all the possible combinations of words in the (American) English language available to identify their film set in New York City, Defendants’ chose LA DOLCE VITA. Defendants’

selection was hardly coincidental (the title, like the original movie and its title, is Italian). It can be nothing but an intentional decision to capitalize on the fame and goodwill of the Fellini film. There is simply no other explanation.

3. **Defendants' LA DOLCE VITA mark is confusingly similar to IMF's LA DOLCE VITA mark.**

In the Second Circuit, claims for infringement are analyzed under the eight-factor Polaroid test set forth in *Polaroid Corp. v. Polarad Electronics Corp.*, 287 F.2d 492 (2d Cir.1961), *cert. denied*, 368 U.S. 820 (1961), *Patsy's Brand, Inc. v. I.O.B. Realty, Inc.*, 317 F.3d 209 (2d Cir.2003), and countless other decisions. Those factors are: (1) the strength of the mark, (2) the degree of similarity between the two marks, (3) the proximity of the products, (4) the likelihood that the prior owner will bridge the gap, (5) actual confusion, (6) the defendant's good faith in adopting its own mark, (7) the quality of defendant's product, and (8) the sophistication of the buyers. *Polaroid Corp.*, 287 F.2d at 495. Some factors may play a more prevalent role than other factors depending on the particular facts of a case. *See, Lon Tai Shing Co. v. Koch & Lowy*, 19 U.S.P.Q.2D 1081 (S.D.N.Y.1990). Applying the *Polaroid* factors to the facts of this case produces an overwhelming likelihood of confusion between Defendants' LA DOLCE VITA and IMF' LA DOLCE VITA titles.

(a) **Strength of IMF's LA DOLCE VITA Mark:** In the Second Circuit the "strength" of a mark refers to a mark's "tendency to identify the goods sold under the mark as emanating from a particular, although possibly anonymous, source." *Patsy's Brand*, 317 F.3d at 217 (quoting *Arrow Fastener Co., Inc. v. Stanley Works*, 59 F.3d 384, 391 (2d Cir.1995)). As demonstrated above in Section III(A)(2), *supra*, pp.11-12, the LA DOLCE VITA mark is strong enough to have acquired significant distinctiveness in the marketplace. This significant distinctiveness is after all, what drew Defendants to misappropriate it, and utilize it as the title of their own film. This factor clearly weighs strongly in IMF's favor.

(b) **Similarity of the Marks:** This factor addresses whether the similarity of the marks is likely to cause confusion. IMF's mark is LA DOLCE VITA and Defendants' mark is also LA DOLCE VITA.¹

(c) **Proximity of the Products:** Both IMF and Defendants conduct business in the film industry and both parties use the LA DOLCE VITA mark as the title of their respective films. IMF concedes that the genres of the films are different in that the Lucas LA DOLCE VITA Films are explicitly pornographic while IMF's LA DOLCE VITA is not; however this distinction does not necessarily mean that the films will move, or do move, through different channels of trade. This is particularly true here where IMF's LA DOLCE VITA, and the Lucas LA DOLCE VITA Films are both sold by cduniverse.com. [Leone Decl., ¶ 33 and Ex. 33.] Further, when a consumer types in the phrase "scene description La Dolce Vita" as a search term on google.com, the third search result that appears is a link to the cduniverse.com website selling the Lucas LA DOLCE VITA Films; the link immediately *following* is also a link to the cduniverse.com website selling IMF's LA DOLCE VITA. [*Id.*] This factor clearly favors IMF as the physical products associated with the LA DOLCE VITA mark, i.e., DVDs, are identical.

(d) **Likelihood that the Prior Owner Will Bridge the Gap:** Both IMF and Defendants operate in the film industry; however, IMF concedes that it has no intention to enter into the pornographic branch of the business.

(e) **Actual Confusion:** Evidence of actual confusion is not necessary to find likelihood of confusion in part because it is so difficult to find. *See, Miles Shoes, Inc. v. R. H.*

¹ Defendants have stated that their consistent use of the "Michael Lucas" name prevents confusion between the films; however, this argument has been rejected by courts since the 1800s. *See, Menendez v. Holt*, 128 U.S. 514 (1888) ("That is an aggravation and not a justification, for it is openly trading in the name of another upon the reputation acquired by the device of the true proprietor." *Id.* at 521.) Moreover, the media, frequently uses the LA DOLCE VITA title alone to refer to Lucas' films, and does not include the "Michael Lucas" name as part of the title: "... just wrapped up his newest film, La Dolce Vita, a glossy remake of Fellini's classic..." [Leone Decl., ¶ 23, and Ex. 18.]; "...will host a "premier party for his latest feature film, 'La Dolce Vita'" [*Id.*, ¶ 25 and Ex. 21.]; "*La Dolce Vita* is available in three versions..." [*Id.*, ¶ 31(c) and Ex. 31.].

Macy & Co., 199 F.2d 602, 603 (2d Cir.1952), *cert. denied*, 345 U.S. 909 (1953); *see also*, *Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Co.*, 799 F.2d 867, 875 (2d Cir.1986). However, IMF has found evidence of confusion, in that a member of the public was apparently deceived into believing that the Lucas LA DOLCE VITA Films are somehow produced, endorsed or authorized by IMF. On November 13, 2006 the following messages were posted on the Internet Movie Database (“IMDB”) message board devoted to Fellini and LA DOLCE VITA:

O my god, no please, no ! tell me this is not true, please no ! Hollywood crap remaking fellini, this [has] got to be false !! Hopefully, fellini will not see this. wait, i didn't understand ! correct me if i'm wrong (I hope I am) is this a porno ? It's a GAY PORNO, though with enough sense to have Sylvia still be played by a woman... Even though it is Savanna Samson.

[Leone Decl., ¶ 32 and Ex. 32.]

Such messages indicate that confusion as to source or sponsorship of the Lucas LA DOLCE VITA Films has occurred, and illustrate one of the ways it is likely to occur.

In any event, the Second Circuit has noted that “[i]n order to obtain a remedy under Section 43(a), it is not necessary to show that anyone has actually been deceived. The courts have interpreted the statute as applying to situations where the misleading description or designation has a tendency to deceive or is likely to cause confusion.” *Dallas Cowboys Cheerleaders*, 467 F.Supp. at 374; *aff'd*, 604 F.2d 200 (2d Cir.1979). As evidence exists that actual confusion as to the source of the Lucas LA DOLCE VITA Films has occurred, this factor clearly favors IMF.

(f) **Defendants’ Good Faith in Adopting its Own Mark:** There is only evidence of Defendants’ bad faith. Defendants admittedly were “inspired” by the original [Leone Decl., ¶ 26 and ¶ 27 and Ex. 22 and 23], and indeed “watched the original La Dolce Vita over and over” [*Id.*, ¶ 29 and Ex. 25] to create their own version of LA DOLCE VITA.

It is obvious from Michael Lucas’ repeated interviews with media, as well as his continuous message posting on his web blog, that his purpose was simply to use the attracting

power and fame of the LA DOLCE VITA mark and film in order to attract customers to his own films. *See*, Section II (E) *supra*, pp 5-7.

When “the evidence shows ‘that another’s name was adopted deliberately with a view to obtain some advantage from the good will, good name and good trade which another has built up, then the inference of likelihood of confusion is readily drawn, for the very act of the adopters has indicated that he expects confusion and resultant profit.’” *Dallas Cowboys Cheerleaders*, 467 F.Supp. at 374-375; *aff’d*, 604 F.2d 200 (2d Cir.1979) (*citing Fleischmann Distilling Corp. v. Maier Brewing Co.*, 314 F.2d 149, 158 (9th Cir.), *cert. denied*, 374 U.S. 830 (1963)). This factor clearly favors IMF.

(g) **Quality of Defendants’ Product:** This factor is primarily concerned with whether the senior user's reputation could be jeopardized by virtue of the fact that the junior user's product is of inferior quality. The quality of the Lucas LA DOLCE VITA Films is clearly inferior to that of the Motion Picture which has garnered critical acclaim and is considered to be “one of the most widely seen and acclaimed European movies.” [Leone Decl., ¶ 8 and Ex. 6.] Again, this factor favors IMF.

(h) **Sophistication of the Buyers:** In general, consumers of films are not sophisticated purchasers (or renters), nor do many of today’s more popular films offer particularly sophisticated content.

An assessment of the above identified factors results in a finding that most if not all weigh heavily in favor of IMF. The only reasonable conclusion that may be reached from the analysis above is that Defendants have infringed IMF’s LA DOLCE VITA mark. As noted earlier, once IMF has shown a likelihood of confusion, irreparable harm and likelihood of success are presumed. *Novartis Animal Health US, Inc*, 409 F.Supp.2d at 266 (*citing New Kayak Pool Corp. v. R & P Pools, Inc.*, 246 F.3d 183, 185 (2d Cir.2001)).

4. **Defendants' LA DOLCE VITA mark Tarnishes IMF's LA DOLCE VITA mark**

Tarnishment of "famous" marks is precluded by Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c). The sine qua non of tarnishment is a finding that a mark will suffer a negative association through a defendant's use of the mark. Courts have recognized that tarnishment may occur when a mark's likeness is placed in the context of sexual activity. *See e.g., Eastman Kodak Co. v. Rakow*, 739 F.Supp. 116, 118 (W.D.N.Y.1990); *see also, Dallas Cowboys Cheerleaders*, 467 F.Supp. at 377, *aff'd*, 604 F.2d 200 (2d Cir.1979). Undoubtedly, the LA DOLCE VITA mark has been tarnished, and will continue to be tarnished if Defendants are allowed to further exploit and sell the Lucas LA DOLCE VITA Films.

B. IMF is Likely to Succeed on the Merits Because Defendants Directly Copied Dialogue, Characters, and Scenes From IMF's LA DOLCE VITA Motion Picture Which Evidences a Prima Facie Case of Copyright Infringement

Copyright protection applies to any original work "fixed in a tangible medium of expression." 17 U.S.C. § 102. "To make out a prima facie case of copyright infringement, the copyright holder must prove ownership of a valid copyright... and copying of the constituent elements of the work that are original." *Twin Peaks Productions, Inc., v Publications Intern., Ltd.* 996 F.2d 1366, 1372 (2d Cir.1993) (*citing Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991)).

As noted, IMF is the owner of all right, title and interest in and to the film, LA DOLCE VITA. [Leone Decl., ¶ 4 and Ex. 2.] As the copyright owner of LA DOLCE VITA, IMF is entitled to the exclusive rights to, and to authorize others to; reproduce and distribute copies of the copyrighted work, publicly perform and display the copyrighted work, and prepare derivative works based upon the copyrighted work. 17 U.S.C. § 106. "A 'derivative work' is a work based on one or more preexisting works, such as a translation, ... dramatization, fictionalization, motion picture version... abridgement, condensation, or any other form in which a work may be recast, transformed,

or adapted.” 17 U.S.C. § 101. Given the known facts about its creation, there can be no doubt that the Lucas LA DOLCE VITA Films are a derivative work of the original LA DOLCE VITA. Any violation of these exclusive rights is a copyright infringement which may be restrained by temporary or permanent injunction and is subject to suit for damages. *See*, 17 U.S.C. §§ 501, 502, and 504.

Having affirmed copyright ownership of LA DOLCE VITA, IMF must establish that Defendants copied original elements of the Motion Picture. In order to do so, a plaintiff need not introduce direct evidence of copying. It may prevail by showing that the defendant had an opportunity to view the copyrighted work and that defendant’s work is substantially similar to the protected work.” 3 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* §§13.01 [B], 13.02, 13.03 (1980) (hereinafter “Nimmer”).

Michael Lucas has conceded access to LA DOLCE VITA. His comments to the press in this regard, for example, that the Lucas LA DOLCE VITA Films are “better than the original” [Leone Decl., ¶ 23 and Ex. 18], and “[b]ased on” and “inspired by the classic tale of sex, glamour, and debauchery...” [*Id.*, ¶ 26 and Ex. 22], confirm that he had an opportunity to view the Motion Picture, and thus an opportunity to dissect, copy, recreate and infringe the original, copyrighted elements embodied in the Motion Picture. *See, Twin Peaks Productions, Inc.*, 996 F.2d at 1372 (holding that defendant’s “access to televised programs serves as the functional equivalent of access to the protectible content” of plaintiff’s work.” *Id.*)

Once actual copying is established, a plaintiff must then show that the copying amounts to an “improper appropriation” by demonstrating that substantial similarity to protected material exists between the two works. *Laureyssens v. Idea Group, Inc.*, 964 F.2d 131, 139 (2d Cir.1992). Substantial similarity can be in the form of either “fragmented literal similarity” or “comprehensive nonliteral similarity”. 3 *Nimmer* §13.03 [A], at 13-28 to 13-29 (1992). As discussed in greater detail below, here, we have both.

To illustrate, Defendants have purposefully copied characters, original scenes, theme, structure and sequence of scenes in order to create a similarity between the Motion Picture and the Lucas LA DOLCE VITA Films. In fact, the non-pornographic portions of the Lucas LA DOLCE VITA Films evidence similarity to LA DOLCE VITA to a remarkable degree and level of detail. In addition to characters, the Lucas LA DOLCE VITA Films depict scenes virtually identical in nature to those portrayed in LA DOLCE VITA.

Similar to LA DOLCE VITA, the Lucas LA DOLCE VITA Films portray a writer, dissatisfied by his career, as the main character “Max Todd” (played by Michael Lucas). Max Todd, like Marcello Rubini, writes articles centered on showbiz (e.g., Hollywood celebrities), and also like Marcello Rubini, is continually seduced by the decadent lifestyle of wealthy friends and celebrities whom he encounters through his chosen profession.

In addition to misappropriating the main character, the Lucas LA DOLCE VITA Films siphon off several supporting characters notable examples of which are: a wealthy lover/companion who (along with Marcello/Max) ‘picks up’ a prostitute (or “trick” as referred to by the Lucas Defendants); an unsociable, jealous, dissatisfied lover/partner who is unremittingly angry with the leading man; and a mentor-type figure to the main character who, despite having a polished facade, suffers from a serious mental incapacity that results in a tragic event. (In the original, this ‘tragic event’ is the mentor’s suicide. Lucas remakes this tragedy as his mentor’s arrest for having sexual relations with an underage boy.) [Leone Decl., ¶ 43 and Ex. 34.]

Defendants have also copied original scenes as well as original dialogue from such scenes. For example, the Motion Picture depicts Marcello and Maddalena (Marcello’s wealthy lover/companion) leave a club, get into Maddalena’s car and pick up a prostitute who asks Maddalena to drive her home. Maddalena and Max drive the prostitute home where they have sex in her apartment. Prior to their interaction with the prostitute, Maddalena states that she would: “like to live in a new city. Where [she] do[esn’t] know anyone.” She is “fed up ... with Rome” and would

“like an island.” Marcello’s response to Maddalena’s complaints is that he “like[s] Rome very much” because “[i]ts ...a jungle where one can hide well.” Further, they say:

“You know what your problem is? You have too much money.” –Marcello (to Maddalena) “And your problem is you don’t have enough.” –Maddalena (to Marcello) [*Id.*, ¶ 44.]

In comparison, a scene portrayed in the Lucas LA DOLCE VITA Films depicts Max and Cameron (Max’s wealthy lover/companion) leave a club and get into Cameron’s limousine, during which time Cameron states that he is “claustrophobic” in Manhattan. Further, they say:

“Your problem is you have too much money” - Max (to Cameron)
“And yours is you don’t have enough” – Cameron (to Max) [*Id.*, ¶ 45 and Ex. 34.]

There are other examples of such misappropriation. A scene portrayed in LA DOLCE VITA depicts Sylvia (portrayed by Anita Eckberg, an early sixties European celebrity-actress), an actress visiting Rome, being interviewed by a number of vociferous reporters in a hotel room while Marcello stands at the back of the room comforting his jealous girlfriend on the phone. Soon after, Marcello and Sylvia are seen at a club, from which Sylvia storms out with Marcello close on her heels. Marcello and Sylvia end up frolicking in the Trevi Fountain, after which Marcello escorts Sylvia home to her hotel only to be struck in the face by Sylvia’s jealous lover. Marcello falls to the ground as paparazzi quickly take advantage of the opportunity to take his photograph. [*Id.*, ¶ 46.]

Similarly, the Lucas LA DOLCE VITA Films contain a scene which depicts a Hollywood couple (Ray Star and Savanna Samson, a well-known pornographic film star), visiting New York, being interviewed by a number of voluble reporters in a hotel room while Max Todd stands at the back of the room comforting his jealous boyfriend on the phone. A short time later, Max and the Hollywood couple are seen at a club, from which Savanna storms out in a jealous rage with Max close behind. Max and Savanna soon end up frolicking in a fountain in lower Manhattan after which Max escorts Savanna back to the club to an impatiently waiting Ray who jealously punches Max in the face. Max falls to the ground as a photographer quickly takes advantage of the opportunity to take his photograph. [*Id.*, ¶ 47 and Ex. 34.]

Defendants appropriation clearly constitute infringement of IMF' copyright in the LA DOLCE VITA film and thus there is a substantial likelihood that IMF will succeed on the merits of this claim.

C. IMF Will Be Irreparably Harmed By Defendants Ongoing Acts of Copyright and Trademark Infringement if Defendants Are Not Enjoined

As noted above, in order for IMF to obtain a preliminary injunction in this Circuit, it must show (a) irreparable harm and (b) either (i) likelihood of success on the merits or (ii) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief. *Warner Bros., Inc.*, 658 F.2d at 78. Irreparable harm will be presumed upon a showing of a likelihood of confusion with regard to its trademark infringement claim, and a prima facie case of copyright infringement.² (*See*, Section III, *supra*, p.9.) This presumption of irreparable harm exists “because the confusion created in the marketplace will damage the copyright holder in incalculable and incurable ways.” *Fisher-Price, Inc.*, 25 F.3d at 124. The same can be said for the trademark holder.

This case presents an interplay of trademark and copyright infringement by Defendants. The facts of this case further reinforce the presumption that there is irreparable harm to IMF due to Defendant's willful ongoing acts of both copyright and trademark infringement of LA DOLCE VITA. If Defendants are not enjoined, IMF will suffer irreparable harm because both the reputation of the LA DOLCE VITA film, as well as IMF's reputation as a reputable classic film library will continue to be at the mercy of Defendants. Defendants are believed to have a substantial marketing budget pursuant to which they are able to exploit the Lucas LA DOLCE VITA Films around the world. Indeed, the Lucas LA DOLCE VITA Films have been publicized by mainstream media outlets, which publish articles that discuss both LA DOLCE VITA and the Lucas LA DOLCE VITA

² Further, in Second Circuit copyright cases, when probable success (i.e., a prima facie case of copyright infringement) can be shown, allegations of irreparable injury do not need to be very detailed for injunction purposes, “because such injury can normally be presumed when copyright is infringed.” *Wainwright Securities, Inc.*, 558 F.2d at 94, *cert. denied*, 434 U.S. 1014 (1978).

Films simultaneously, and thus portray a possible relationship between IMF and Defendants or sponsorship by IMF of Defendants' films. Due to the ongoing injury to the business reputation of IMF and the tarnishment of the distinctive quality of the LA DOLCE VITA mark and film, it is crucial that the Court grant IMF's request for a preliminary injunction.

D. The Balance of Hardships Favors IMF

IMF has demonstrated both irreparable harm and a high probability of success on the merits. Similarly, IMF can show that the balance of hardships strongly tips in IMF's favor because denying a preliminary injunction would be much more harmful to IMF than granting one would be to Defendants.

1. Without an Injunction, IMF Will Continue to Suffer Irreparable Harm.

In this case, further harm to the classic film LA DOLCE VITA and IMF's business reputation is certain to occur if the preliminary injunction is denied. Consumers who read about or encounter the Lucas LA DOLCE VITA Films are likely to believe, mistakenly, that IMF has sponsored, authorized, endorsed or is otherwise affiliated with Defendants, which in turn, will cause irreparable harm to IMF's goodwill and reputation as a reputable classic film library. Further, even knowledgeable consumers who encounter the Lucas LA DOLCE VITA Films might believe, mistakenly, that Plaintiff licensed certain content to Defendants. This is because the degree of material appropriated by Defendants would require a license from the trademark and copyright holder of LA DOLCE VITA. In this regard, IMF's licensing program will be irreparably harmed due to Defendants continuing acts of infringement, as the possibility that existing licensees will no longer wish to be associated with IMF or LA DOLCE VITA and/or possible future licensees will choose not to associate with IMF or LA DOLCE VITA. *See, Warner Bros., Inc.*, 658 F.2d 76 (irreparable harm found because plaintiff's "licensees will suffer substantial lost sales, and its licensing program will

lose much of the confidence reposed in it by the licensees, who also made substantial investments based upon the exclusivity of their licenses.” *Id.* at 79.)

Quite simply, to deny IMF relief would be effectively to enable Defendants to reap where they have not sown.

2. **Enjoining Defendants From Infringing IMF’s Rights Does Not Constitute an Unfair Hardship to Defendants.**

While IMF is being irreparably harmed, Defendants’ LA DOLCE VITA Films are eviscerating the goodwill in the LA DOLCE VITA title and mark. By selecting Plaintiff’s LA DOLCE VITA mark with full prior knowledge, copying characters, scenes and dialogue directly from the Motion Picture, and refusing to cease exploitation of their films after receiving proof of Plaintiff’s ongoing copyright and trademark rights, Defendants have forcibly wrested control of the LA DOLCE VITA title and mark away from IMF, and have placed IMF’s reputation at the mercy of Defendants’ choosing.

If this Court enjoins Defendants from further exploitation of the films, the only possible hardship to Defendants would be monetary in nature. To the extent this minimal potential harm to Defendants is recognized at all, it should be “discounted by the fact that the defendant brought that injury upon itself.” *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharms. Co.*, 290 F.3d 578, 596 (3d Cir.2002) (affirming grant of preliminary injunction for false advertising).

The balance of hardships tips strongly in favor of IMF. If the preliminary injunction is denied, IMF’s business reputation will continue to be in the hands of Defendants, and the goodwill continued to be built up by IMF in the LA DOLCE VITA mark and film will continue to be destroyed. On the other hand, if the preliminary injunction is granted, Defendants’ wrongful misappropriation of IMF’s intellectual property rights will rightfully come to an end. This balancing of each party’s hardships demonstrates the imminent need for a preliminary injunction.

E. Granting the Injunction Is In the Public Interest

In a trademark infringement case, the public interest is avoiding consumer confusion with respect to the source of goods and services is clear. *See, e.g., Park'N Fly, Inc. v. Dollar Park and Fly, Inc.*, 469 U.S. 189, 198 (1985) (noting that trademark laws ensure protection of consumers as well as trademark owners). Further, as the United States Constitution makes clear, copyright law is firmly grounded on the public interest of encouraging original artistic creation, and by extension punishing copyright infringers who wrongly rise on the creativity of others. (“To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” U.S. Const., art. I, § 8, cl. 8.). The underlying concepts of this case are twofold - protecting consumers from being deceived and safeguarding renowned classical works from being copied without authorization.

IV. CONCLUSION

For all of the foregoing reasons, IMF respectfully requests that the Court immediately grant its motion for a preliminary injunction to prevent further infringement of IMF’s intellectual property rights in the LA DOLCE VITA mark and film, according to the terms set forth in the accompanying proposed order.

Respectfully submitted,

FISH & RICHARDSON P.C.

Dated: March 15, 2007

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